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June 5, 2018

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# Item 1

State of Florida



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FPSC - COMMISSION CLERK

## Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD  
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

**DATE:** May 23, 2018

**TO:** Office of Commission Clerk (Stauffer)

**FROM:** Office of the General Counsel (Cowdery) *JK*  
Division of Accounting and Finance (Fletcher) *BS ALM JMC*  
Division of Economics (Draper, Guffey) *PA ESN*  
Division of Engineering (Graves, King) *W TCS*

**RE:** *124* Docket No. 20180029-WS – Proposed amendment of Rule 25-30.433, F.A.C.,  
Rate Case Proceedings.

**AGENDA:** 06/05/18 – Post-Hearing Recommendation – Participation Limited to  
Commissioners and Staff

**COMMISSIONERS ASSIGNED:** All Commissioners

**PREHEARING OFFICER:** Brown

**RULE STATUS:** May be deferred

**SPECIAL INSTRUCTIONS:** None

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### Case Background

Rule 25-30.433, Florida Administrative Code (F.A.C.), addresses the procedures that apply in water and wastewater rate case proceedings. The rule includes the subsection (1) requirement that the Commission make a determination on the quality of service provided by the utility in every rate case. The rule states that this determination will be based on an evaluation of three separate components of water and wastewater utility operations: (1) quality of the utility's product (water and wastewater); (2) operational conditions of the utility's plant and facilities; and (3) the utility's attempt to address customer satisfaction. Rulemaking to amend Rule 25-30.433, F.A.C., was initiated by staff in order to remove consideration of the operational conditions of the utility's plant and facilities as one of the factors the Commission considers in evaluating a utility's quality of service under subsection (1). The rule was amended so that the

Commission considers operational conditions of the utility's plant and facilities separately from quality of service in a new subsection (2). In addition, the factors considered by the Commission in making these determinations were updated to clarify and codify existing agency practice.

The Office of Public Counsel (OPC) participated in the December 14, 2017, staff rule development workshop on Rule 25-30.433, F.A.C. OPC filed post-workshop comments that included its suggestion that paragraph (1)(d) concerning the Commission's determination of quality of service should be amended to require the Commission to consider all customer communications, verbal and written, to the greatest extent possible, in recognition of the customers' interest in the quality of service determination. In addition, OPC commented that paragraph (2), concerning the Commission's determination of operational conditions of the utility plant, should allow for customers, utility employees, or other knowledgeable persons to provide information related to the utility's infrastructure or operational conditions of the plant and facilities. OPC did not provide any specific language for amending the rule.

In response to OPC's comments, staff broadened the language of Rule 25-30.433, F.A.C., and recommended that rule paragraph (1)(d) be amended to require the Commission, as part of determining quality of service in rate cases, to consider: "Any testimony, complaints and comments of the utility's customers and others with knowledge of the utility's quality of service." Staff further recommended that paragraph (2)(c) be added to the rule to require the Commission, as part of determining whether the infrastructure and operational conditions of the plant and facilities are in compliance with Rule 25-30.225, F.A.C., to consider: "Any testimony, complaints and comments of the utility's customers and others with knowledge of the infrastructure and operational conditions of the utility's plant and facilities." In its recommendation to the Commission, staff stated that it believed that:

[T]he recommended rule language is broad enough to sufficiently cover the many ways that customer complaints and comments are provided to the Commission (e.g., both oral and written statements directly from customers, OPC testimony in its representation of customers, Commission staff testimony regarding customer complaints).

The Commission considered staff's recommended amendments to Rule 25-30.433, F.A.C., at its March 1, 2018, Agenda Conference. The Office of Public Counsel (OPC) spoke at the March 1, 2018, Agenda Conference, and suggested that additional language taken from the staff recommendation should be added to recommended paragraphs (1)(d) and (2)(c), as follows:

(1)(d) Any testimony, complaints and comments of the utility's customers and others with knowledge of the utility's quality of service (e.g., both oral and written statements directly from customers, OPC testimony in its representation of customers, Commission staff testimony regarding customer complaints); and

(2)(c) Any testimony, complaints and comments of the utility's customers and others with knowledge of the infrastructure and operational conditions of the utility's plant and facilities (e.g., both oral and written statements directly from

customers, OPC testimony in its representation of customers, Commission staff testimony regarding customer complaints); and

The Commission approved staff's recommended amendments to Rule 25-30.433, F.A.C., without the changes suggested by OPC. The Commission certified proposed Rule 25-30.433, F.A.C., as a minor violation rule, and approved the Statement of Estimated Regulatory Costs' findings. Proposed Rule 25-30.433, F.A.C., was published in the March 5, 2018, edition of the F.A.R., Volume 44, Number 44. A copy of proposed Rule 25-30.433, F.A.C., is attached as Attachment A.

On March 22, 2018, pursuant to Section 120.54(3)(c), Florida Statutes (F.S.), OPC filed a Petition for a Hearing on paragraphs (1)(d) and (2)(c) of proposed Rule 25-30.433, F.A.C. (Petition). A rule hearing was held before the full Commission on May 8, 2018, pursuant to notice appearing in the March 13, 2018, edition of the F.A.R., Volume 44, Number 73. At the rule hearing, OPC suggested different language for changing the proposed rule than it had requested in its Petition. Following OPC's argument, the Commission directed staff to bring a recommendation to the June 5, 2018, Agenda Conference, on the changes to the proposed rule suggested by OPC.

This recommendation addresses whether the Commission should make changes to paragraphs (1)(d) and (2)(c) of proposed Rule 25-30.433, F.A.C., as suggested by OPC. The Commission has jurisdiction pursuant to Sections 120.54, 350.127(2), 367.0812(5), 367.0814, 367.121, and 367.1213, F.S.

## Discussion of Issues

**Issue 1:** Should the Commission make the Office of Public Counsel's suggested changes to paragraphs (1)(d) and (2)(c) of proposed Rule 25-30.433, F.A.C.?

**Recommendation:** No. Staff recommends that the Commission should not make changes to paragraphs (1)(d) and (2)(c) of proposed Rule 25-30.433, F.A.C. Proposed Rule 25-30.433, F.A.C., as set forth in Attachment A, should be filed with the Department of State pursuant to the provisions of Section 120.54, F.S. (Cowdery, King, Graves, Fletcher, Draper, Guffey)

**Staff Analysis:** A rule hearing was held by the Commission on May 8, 2018, on OPC's Petition to make changes to paragraphs (1)(d) and (2)(c) of proposed Rule 25-30.433, F.A.C. (Petition). Pursuant to subparagraph 120.54(3)(c)1., F.S., the Commission is required, in making its decision, to consider OPC's Petition and documents introduced by OPC at the May 8, 2018, rule hearing.

### OPCs Arguments at the Rule Hearing

OPC's Petition requested that the Commission change proposed Rule 25-30.433, F.A.C., by adding the following underlined language when making its quality of service determinations in rate case proceedings:

(1)(d) Any testimony, complaints and comments of the utility's customers and others with knowledge of the utility's quality of service (e.g., both oral and written statements directly from customers, OPC testimony in its representation of customers, Commission staff testimony regarding customer complaints); and

OPC also requested that the Commission change proposed Rule 25-30.433, F.A.C., by adding the following underlined language when making its determination in rate case proceedings on whether infrastructure and operational conditions of utility plant and facilities are in compliance with Rule 25-30.225, F.A.C.:

(2)(c) Any testimony, complaints and comments of the utility's customers and others with knowledge of the infrastructure and operational conditions of the utility's plant and facilities (e.g., both oral and written statements directly from customers, OPC testimony in its representation of customers, Commission staff testimony regarding customer complaints); and

At the May 8, 2018 rule hearing, OPC submitted language for changing Rule 25-30.433, that was different from the changes it had requested in its Petition, as follows:

(1)(d) Any testimony, complaints and comments of the utility's customers and others with knowledge of the utility's quality of service (including both oral and written statements provided by customers, informal and formal testimony by any party, and Commission staff testimony regarding customer complaints); and

(2)(c) Any testimony, complaints and comments of the utility's customers and others with knowledge of the infrastructure and operational conditions of the

Date: May 23, 2018

utility's plant and facilities (including both oral and written statements provided by customers, formal and informal testimony by any party, and Commission staff testimony regarding customer complaints); and

OPC characterized its suggested examples as stating a minimum of what the Commission shall consider when determining quality of service and the infrastructure and operational conditions of the utility plant without excluding anything else from consideration. OPC stated that it does not believe proposed Rule 25-30.433, F.A.C., is deficient, but that it could be improved by including the suggested examples.

OPC argued that the Commission's intent should be expressed in the rule, especially in an arena where ambiguity has been found in the qualitative nature of customer testimony and other forms of customer input. OPC cited to Order No. 15490, issued December 23, 1985, Docket No. 850116-TL, In re: Show cause to Southern Bell regarding customer calling features, as an example where the plain language of the rule was inconsistent with the Commission's intent. The Commission in that case withdrew its order to show cause after determining that even though the Commission's intent was that the rule apply to each person seeking information on basic telephone service, the rule language itself referred to "applicants."

OPC explained that the reason why OPC suggested changing proposed Rule 25-30.433, F.A.C., to include examples of the types of comments, complaints, and statements the Commission must consider was OPC's concern that the rule as proposed could be subject to different interpretations in the future. OPC stated that in past rate cases there has been uneven or limited consideration of customer comments by the Commission. OPC pointed to a 1997 water and wastewater overearnings rate case, In re: Investigation of Rates of Gulf Utility, Order No. 97-0847-FOF-WS, issued July 15, 1997, Docket No. 960329-WS, citing to the order's statement that the Commission in evaluating customer service "also evaluated by a review of recent complaints and with direct customer testimony at hearing." OPC stated that the word "direct" suggests that the testimony was given "live" only at a formal hearing, indicating that the Commission could have discretion to define in a limiting manner what "any" means and what "testimony" means. OPC also noted that in recent Docket No. 20170222-WS, In re: Proposed amendment of Rules 25-30.130, Record of Complaints, and 25-30.355, Complaints, F.A.C., the Commission proposed amending Rule 25-30.130, F.A.C., to more specifically define "complaints," and didn't just say "any complaints."

OPC further argued that the Commission created ambiguity in interpreting proposed rule paragraphs (1)(d) and (2)(c) because the Commission considered and then rejected OPC's suggested language that gave examples of types of testimony and comments for consideration in future cases. OPC also raised a concern that paragraphs (1)(d) and (2)(c) might be read too narrowly because it read proposed paragraph (1)(b) as having narrowed the scope of information to be considered by the Commission in determining quality of service. OPC did not object to proposed paragraph (1)(b), but interprets it as constricting the scope of documentation to be considered because the rule language was amended from requiring consideration of "consent orders" to requiring consideration of "provisions of consent orders that relate to quality of service."



OPC stated that the reason it submitted the modified changes at hearing was to meet the concerns it perceived from the March 1, 2018, Agenda Conference. However, based on questioning by the Commissioners at the rule hearing, OPC concluded that of its two rule change options, it recommended that the Commission change the proposed rule as suggested originally at the March 1, 2018, Agenda Conference and in its Petition, except that the Latin phrase “e.g.” should be replaced with the phrase “for example.”

### **Staff Analysis**

Existing Rule 25-30.433, F.A.C., requires that in determining quality of service, the Commission must consider the testimony of utility’s customers. In order to clarify and codify existing agency practice, and in response to post-workshop comments by OPC, the Commission proposed paragraph (1)(d) that requires the Commission in determining quality of service to consider any testimony, complaints, and comments of the utility’s customers and others with knowledge of the utility’s quality of service. In addition, the Commission proposed paragraph (2)(c) that requires the Commission in determining infrastructure and operational conditions of the utility plant to consider any testimony, complaints, and comments of the utility’s customers and others with knowledge of the infrastructure and operational conditions of the utility’s plant and facilities. Staff believes that the plain meaning of this proposed language encompasses the specific examples suggested by OPC.

There is no ambiguity in the proposed language. The adjective “any” modifies the nouns testimony, complaints, and comments in each proposed paragraph, meaning that the Commission shall consider any testimony, any complaints, and any comments of utility customers and others with knowledge of the utility’s quality of service or infrastructure and operational conditions of the utility’s plant and facilities. See, e.g. State v. Huggins, 802 So. 2d 276 (Fla. 2001)(in interpreting a statutory provision where an adjective was followed by two nouns, the court stated that such phrases are commonly construed to mean that the adjective modifies subsequent nouns). OPC ultimately agreed with this interpretation of “any” at hearing. Further, as is generally the case, “any” in this context means “all.” E.g. Baker v. Economic Research Services, Inc., 44 Fla. L. Weekly D643 (Fla. 1st DCA 2018)). Staff believes that the plain language of the proposed rule should result in consistency in the Commission’s consideration of all listed input into its determinations of quality of service and the infrastructure and operational conditions of utility plant and facilities in rate cases.

Staff does not believe that In re: Show cause to Southern Bell, Order No. 15490, is applicable to the proposed rule language. In that case, the Commission ordered Southern Bell to show cause why it should not be fined for violation of Rule 25-4.107(1), F.A.C., that required a telephone company, upon initial contact, to inform an applicant for service of the least expensive service available. Staff had conducted an investigation by telephoning various Southern Bell business offices and inquiring as to the cost for basic telephone service, with responses not in compliance with Rule 25-4.107(1), F.A.C. The Commission withdrew the order to show cause because although it was the Commission’s intent that Rule 25-4.107(1), F.A.C., apply to each person seeking information about basic telephone service, the plain language of the rule addressed only “applicant.” Staff agrees with OPC that if the plain language of a rule does not reflect the Commission’s intent, the plain language must control. However, in this case, the plain language in the proposed rule is not restrictive, but broadly covers any testimony, complaints, and

Date: May 23, 2018

comments of utility customers and others with knowledge of the utility's quality of service or infrastructure and operational conditions of the utility's plant and facilities.

OPC gave an example of what it believed showed the Commission's "uneven application" of the type of information considered in determining quality of service. OPC stated that Order No. 97-0847-FOF-WS, issued July 15, 1997, Docket No. 960329-WS, In re: Investigation of Rates of Gulf Utility, suggested that the Commission considered only direct customer testimony given at formal hearing in determining quality of service. Staff disagrees with OPC's position because the order indicates that in determining quality of service, in addition to reviewing recent complaints and hearing direct testimony at hearing, the Commission also heard testimony of customers attending the service hearing. Further, there is nothing in Order No. 97-0847 that would limit the plain language interpretation of proposed rule paragraphs (1)(d) and (2)(c) requiring the Commission to consider "any testimony, complaints and comments of the utility's customers and others with knowledge" of the quality of service or of the infrastructure and operational conditions of the utility's plant and facilities.

Including examples of types of comments, testimony, and complaints in the proposed rule may lead to confusion and ambiguity, raising the question of whether listing certain specific types of input excludes other specific types of input. Staff believes that the better practice is to not include unnecessary, superfluous, and duplicative language in rules. Staff likewise is of the opinion that the proposed language is clear and unambiguous, plainly includes all the examples identified by OPC, and that the proposed language should not be changed as suggested by OPC.

Staff notes that if the Commission does not change the proposed rule, it may choose to state in the Notice of Adoption of Rule that the language of paragraphs (1)(d) and (2)(c) is broad and includes by its plain language both oral and written statements provided directly by customers, testimony of any party, and Commission staff testimony regarding customer complaints.

If the Commission decides to change the proposed rule to include additional language in paragraphs (1)(d) and (2)(c), as suggested by OPC, staff would recommend that the Commission use the language suggested in OPC's Petition, except that the Latin abbreviation "e.g." should be replaced with the phrase "for example" because plain language is clear and as such preferable to the use of jargon and Latin abbreviations common to legal writing. (See Attachment B hereto) If the Commission makes these changes, it would not affect the conclusion in the SERC and would not change the rule's status as a minor violation rule.

## **Conclusion**

As discussed above, staff recommends that the Commission should not make changes to paragraphs (1)(d) and (2)(c) of proposed Rule 25-30.433, F.A.C. Proposed Rule 25-30.433, F.A.C., as set forth in Attachment A, should be filed with the Department of State pursuant to the provisions of Section 120.54, F.S.



**Issue 2:** Should this docket be closed?

**Recommendation:** Yes. If the Commission approves staff's recommendation in Issue 1, the rule may be then filed for adoption with the Department of State no sooner than 14 days after the June 5, 2018, Agenda Conference, and this docket should be closed. (Cowdery)

**Staff Analysis:** If the Commission approves staff's recommendation in Issue 1, the rule may be then filed for adoption with the Department of State no sooner than 14 days after the June 5, 2018, Agenda Conference, and this docket should be closed.

If the Commission votes to make changes to proposed Rule 25-30.433, F.A.C., a Notice of Change will be published in the Florida Administrative Register. The rule may be then filed for adoption with the Department of State 21 days after the Notice of Change is published in Florida Administrative Register, and this docket should be closed

**25-30.433 Rate Case Proceedings.**

In a rate case proceeding, the following provisions shall apply, ~~unless the applicant or any intervenor demonstrates that these rules result in an unreasonable burden. In these instances, fully supported alternatives will be considered by the Commission. Any alternatives proposed by the utility must be filed with the minimum filing requirements.~~

(1) The Commission in every rate case shall make a determination of the quality of service provided by the utility by evaluating the. ~~This shall be derived from an evaluation of three separate components of water and wastewater utility operations: quality of utility's product (water and wastewater); operational conditions of utility's plant and facilities; and the utility's attempt to address customer satisfaction (water and wastewater). In making this determination, the Commission shall consider: Sanitary surveys, outstanding citations, violations and consent orders on file with the Department of Environmental Protection (DEP) and county health departments or lack thereof over the preceding 3 year period shall also be considered. DEP and county health department officials' testimony concerning quality of service as well as the testimony of utility's customers shall be considered.~~

(a) The most recent chemical analyses for each water system as described in Rule 25-30.440(3), F.A.C.;

(b) Any Department of Environmental Protection (DEP) and county health department citations, violations and provisions of consent orders that relate to quality of service;

(c) Any DEP and county health department officials' testimony concerning quality of service;

(d) Any testimony, complaints and comments of the utility's customers and others with knowledge of the utility's quality of service; and

(e) Any utility testimony and responses to the information provided in paragraphs (1)(a) – (d) above.

CODING: Words underlined are additions; words in ~~struck through~~ type are deletions from existing law.

1        (2) In order to ensure safe, efficient, and sufficient service to utility customers, the  
2        Commission shall consider whether the infrastructure and operational conditions of the plant  
3        and facilities are in compliance with Rule 25-30.225, F.A.C. In making this determination,  
4        the Commission shall consider:  
5                (a) Any testimony of DEP and county health department officials;  
6                (b) Inspections, including sanitary surveys for water systems and compliance evaluation  
7        inspections for wastewater systems; citations, violations and consent orders issued to the  
8        utility;  
9                (c) Any testimony, complaints and comments of the utility's customers and others with  
10        knowledge of the infrastructure and operational conditions of the utility's plant and facilities;  
11        and  
12                (d) Any utility testimony and responses to the information provided in paragraphs (2)(a) –  
13        (c) above.  
14        ~~(3)(2)~~ Working capital for Class A utilities shall be calculated using the balance sheet  
15        approach. Working capital for Class B and C utilities shall be calculated using the formula  
16        method (one-eighth of operation and maintenance expenses).  
17        ~~(4)(3)~~ Used and useful debit deferred taxes shall be offset against used and useful credit  
18        deferred taxes in the capital structure. Any resulting net debit deferred taxes shall be included  
19        as a separate line item in the rate base calculation. Any resulting net credit deferred taxes shall  
20        be included in the capital structure calculation. No other deferred debits shall be considered in  
21        rate base when the formula method of working capital is used.  
22        ~~(5)(4)~~ The averaging method used by the Commission to calculate rate base and cost of  
23        capital shall be a 13-month average for Class A utilities and the simple beginning and end-of-  
24        year average for Class B and C utilities.  
25        ~~(6)(5)~~ Non-used and useful adjustments shall be applied to the applicable depreciation  
CODING: Words underlined are additions; words in ~~struck through~~ type are deletions from  
existing law.

1 expense. Property tax expense on non-used and useful plant shall not be allowed.

2 ~~(7)(6)~~ Charitable contributions shall not be recovered through rates.

3 ~~(8)(7)~~ Income tax expense shall not be allowed for subchapter S corporations, partnerships  
4 or sole proprietorships.

5 ~~(9)(8)~~ Non-recurring expenses shall be amortized over a 5-year period unless a shorter or  
6 longer period of time can be justified.

7 ~~(10)(9)~~ The amortization period for forced abandonment or the prudent retirement, in  
8 accordance with the National Association of Regulatory Utility Commissioners Uniform  
9 System of Accounts, of plant assets prior to the end of their depreciable life shall be calculated  
10 by taking the ratio of the net loss (original cost less accumulated depreciation and  
11 contributions-in-aid-of-construction (CIAC) plus accumulated amortization of CIAC plus any  
12 costs incurred to remove the asset less any salvage value) to the sum of the annual  
13 depreciation expense, net of amortization of CIAC, plus an amount equal to the rate of return  
14 that would have been allowed on the net invested plant that would have been included in rate  
15 base before the abandonment or retirement. This formula shall be used unless the specific  
16 circumstances surrounding the abandonment or retirement demonstrate a more appropriate  
17 amortization period.

18 ~~(11)(40)~~ A utility is required to have the right of access and continued use of own the land  
19 upon which the utility treatment facilities are located, ~~or possess the right to the continued use~~  
20 ~~of the land, such as a 99-year lease. Documentation of continued use shall be in the form of a~~  
21 recorded warranty deed, recorded quit claim deed accompanied by title insurance, recorded  
22 lease such as a 99-year lease, or recorded easement. The Commission may consider a written  
23 ~~easement or other cost-effective alternative.~~

24 ~~(12)(44)~~ In establishing an authorized rate of return on common equity, a utility, in lieu of  
25 presenting evidence, may use the current leverage formula adopted by Commission order. The  
CODING: Words underlined are additions; words in ~~struck through~~ type are deletions from  
existing law.

1 equity return established shall be based on the equity leverage order in effect at the time the  
2 Commission decides the case.

3 ~~(13)(12)~~ Nonutility investment should be removed directly from equity when reconciling  
4 the capital structure to rate base unless the utility can show, through competent evidence, that  
5 to do otherwise would result in a more equitable determination of the cost of capital for  
6 regulatory purposes.

7 ~~(14)(13)~~ Interest expense to be included in the calculation of income tax expense shall be  
8 the amount derived by multiplying the amount of the debt components of the reconciled  
9 capital structure times the average weighted cost of the respective debt components. Interest  
10 expense shall include an amount for the parent debt adjustment in those cases covered by Rule  
11 25-14.004, F.A.C. Interest shall also be imputed on deferred investment tax credits in those  
12 cases covered by 26 CFR Part 1, s. 1.46-6(b)(2)(i), (3) and (4)(ii) issued May 22, 1986 and  
13 effective for property constructed or acquired on or after August 15, 1971.

14 *Rulemaking Authority 350.127(2), 367.0812(5), 367.0814, 367.121, 367.1213 FS. Law*

15 *Implemented 367.081, 367.0812(1), 367.0814, 367.0822, 367.1213, ~~376.1213~~ FS. History—*  
16 *New 11-30-93, Amended 12-14-93, \_\_\_\_\_.*

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existing law.

**Office of Public Counsel's suggested changes to proposed Rule 25-30.433, F.A.C.**

Section (1)

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(d) Any testimony, complaints and comments of the utility's customers and others with knowledge of the utility's quality of service (for example, both oral and written statements directly from customers, Office of Public Counsel testimony in its representation of customers, Commission staff testimony regarding customer complaints); and

Section (2)

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(c) Any testimony, complaints and comments of the utility's customers and others with knowledge of the infrastructure and operational conditions of the utility's plant and facilities (for example, both oral and written statements directly from customers, Office of Public Counsel testimony in its representation of customers, Commission staff testimony regarding customer complaints); and

# Item 2

State of Florida



## Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD  
TALLAHASSEE, FLORIDA 32399-0850

**-M-E-M-O-R-A-N-D-U-M-**

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**DATE:** May 23, 2018

**TO:** Office of Commission Clerk (Stauffer)

**FROM:** Office of the General Counsel (Trierweiler, Harper) *HT*  
Division of Economics (Draper, Guffey, Merryday) *WJ*  
Division of Engineering (Moses) *ESD* *TH*

**RE:** Docket No. 20180055-GU – Petition to resolve territorial dispute in Sumter County and/or Lake County with City of Leesburg and/or South Sumter Gas Company, LLC, by Peoples Gas System.

**AGENDA:** 06/5/18 – Regular Agenda – Motion to Dismiss – Oral Argument Requested – Participation is at the Commission's Discretion

**COMMISSIONERS ASSIGNED:** All Commissioners

**PREHEARING OFFICER:** Polmann

**CRITICAL DATES:** None

**SPECIAL INSTRUCTIONS:** Place this item immediately prior to Docket No. 20180085-GU

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### Case Background

On February 23, 2018, Peoples Gas System (Peoples) filed a petition pursuant to Section 366.04(3)(b), Florida Statutes (F.S.), and Rule 27-7.0472, Florida Administrative Code (F.A.C.), (Petition), requesting that the Commission resolve a territorial dispute between Peoples and City of Leesburg (Leesburg) and South Sumter Gas Company, LLC (SSGC).

On April 2, 2018, SSGC and Leesburg filed separate motions to dismiss Peoples' Petition (Petition) and requests for oral argument. On April 9, 2018, Peoples filed separate responses to SSGC and Leesburg's motions to dismiss and requests for oral argument.



Docket No. 20180055-GU

Date: May 23, 2018

This recommendation addresses SSGC's and Leesburg's motions to dismiss. The Commission has jurisdiction pursuant to Chapter 366.04, F.S.

### **Discussion of Issues**

**Issue 1:** Should oral argument on SSGC's and Leesburg's Motions to Dismiss be granted?

**Recommendation:** Yes. Oral argument on SSGC's and Leesburg's Motions to Dismiss should be granted. The parties should be allowed 5 minutes per side to make their arguments. (Trierweiler)

**Staff Analysis:** Rule 25-22.0022(1), F.A.C., provides that a request for oral argument should be timely filed and must state with particularity why oral argument would aid the Commission in understanding and evaluating the issues to be decided. Rule 25-22.0022(7), F.A.C., states that oral argument at Agenda Conference will be entertained for dispositive motions, such as a motion to dismiss. SSGC's and Leesburg's requests for oral argument on their motions were timely filed. SSGC believes that oral argument will aid the Commission in fully comprehending the deficiencies of the Petition, the underlying factual situation involving the various parties, and the very significant policy issues raised by PGS. SSGC and Leesburg requested 10 minutes each party for oral argument.

Peoples filed a response in opposition to the requests for oral argument, stating that oral argument would not assist the Commission in its ruling on the motions. However, Peoples asks that if the Commission decides to grant oral argument that Peoples be given an amount of time equal to the time granted to both SSGC and Leesburg combined.

Rule 25-22.0022(3), F.A.C., provides that granting or denying a request for oral argument is within the sole discretion of the Commission. Staff believes that oral argument will assist the Commission in understanding and evaluating the issues and arguments raised in the motions. If oral argument is granted, 5 minutes for each side appears to be reasonable.

**Issue 2:** Should the Commission grant SSGC and Leesburg's Motions to Dismiss?

**Recommendation:** The Commission should deny the Motions to Dismiss Peoples' Petition because Peoples' Petition contains a sufficient statement of the ultimate facts as required by Rule 28-106.201, F.A.C. (Initiation of Proceedings) and the specific pleading requirements of Rule 25-7.0472, F.A.C. (Territorial Disputes for Natural Gas Utilities). (Trierweiler)

**Staff Analysis:**

**Standard of Review for Motion to Dismiss**

Unless otherwise provided by law, a petition or request for hearing must include all items required by Rule 28-106.201, F.A.C., if the hearing involves disputed issues of material fact. A petition filed under Chapter 120, F.S., that is in substantial compliance with the applicable uniform rule requirements need not be dismissed. Rule 25-7.0472, F.A.C., lists the considerations that the Commission is required to evaluate when resolving territorial disputes for natural gas utilities.

The function of a motion to dismiss is to raise as a question of law the sufficiency of the facts alleged to state a cause of action. *Varnes v. Dawkins*, 624 So. 2d 349, 350 (Fla. 1st DCA 1993). The applicable standard for disposing of a motion to dismiss is whether, with all factual allegations in the petition taken to be true, the petition states a cause of action upon which relief may be granted. *Id.*

In making this determination, all reasonable inferences drawn from the petition must be made in favor of the petitioner. *Id.* Consideration of a motion to dismiss "may not properly go beyond the four corners of the complaint in testing the legal sufficiency of the allegations set forth therein." *Stubbs v. Plantation Gen. Hosp. Ltd. P'ship*, 988 So. 2d 683, 684 (Fla. 4th DCA 2008) (internal quotation omitted). All of the elements of a cause of action must be properly alleged in a pleading seeking affirmative relief. If the elements are not properly alleged, the pleading should be dismissed. *Kislak v. Kreedian*, 95 So. 2d 510 (Fla. 1957).

**Peoples Gas System's Petition**

The Petition states that Peoples is a natural gas local distribution company (LDC) providing sales and transportation delivery of natural gas throughout most of Florida to a total of approximately 380,000 customers, and is a "natural gas utility" as defined by Section 366.04(3)(c), F.S., subject to the Commission's statutory jurisdiction to resolve territorial disputes. The Petition states that Leesburg is a Florida municipality that operates a natural gas distribution system in portions of Lake and Sumter Counties as a "natural gas utility" as defined by Section 366.04(3)(c), F.S. Leesburg is also subject to the Commission's statutory jurisdiction to resolve territorial disputes.

The Petition states that SSGC is a Florida limited liability company formed on or about March 22, 2017. Peoples asserts that SSGC does not currently provide natural gas service and does not

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have customers. SSGC, on behalf of the Villages (a large Central Florida Community that spans 3 counties), is constructing natural gas infrastructure in the service area at issue.

The Petition describes Peoples' natural gas distribution facilities in Sumter County to be "extensive" while Leesburg's are "limited." Peoples contends that virtually all of Leesburg's facilities and customers are in Lake County and Leesburg. Virtually all of Peoples' customers in Sumter County are located within The Villages. Peoples states that its employees observed natural gas construction materials at the intersection of County Roads 468 and 501 in Sumter County, in late December 2017. In January 2018, Peoples states that it met with the Director of the Leesburg Gas Department to determine what was being constructed and to avoid a territorial dispute. Peoples was directed by Leesburg to contact The Villages for details.

According to the Petition, in August 2009, Peoples was granted by the City of Wildwood, a non-exclusive franchise to provide natural gas service (the service areas in question all appear to fall within the Wildwood City limits). Peoples alleges that the City of Wildwood is in the process of establishing a non-exclusive franchise agreement with SSGC to provide natural gas to the same service area.

The Petition also contains a copy of an Agenda Memorandum recommending approval of the Ordinance by Leesburg that would ratify a franchise agreement between Leesburg and SSGC. The Leesburg and SSGC Agreement concerns the construction, purchase, and sale of certain natural gas distribution facilities, for the purpose of providing natural gas service to customers located within the service area in question. The Agreement states that upon completion of each section in the development, SSGC has agreed to convey ownership of the system to Leesburg in exchange for receiving a portion of the gas revenues charged to natural gas customers within the service area. Exhibit B of Peoples' Petition (pg. 21) contains a map where SSGC has depicted its proposed natural gas infrastructure within the service area in question. *See* Exhibit A.

According to Peoples' Petition, Leesburg has submitted construction notices to the Commission as required by Rule 25-12.082, F.A.C. Peoples argues the notices reflect planned construction of natural gas facilities in Sumter County which is taking place immediately adjacent to Peoples' existing natural gas facilities. Peoples alleges that some of the facilities to be constructed would cross an existing Peoples' distribution main.

Peoples wants to provide natural gas services to the customers in the service area in question. Peoples graphically depicts the disputed area in two color coded maps attached to its Petition. The first map contains Peoples' rendition of the SSGC's proposed natural gas construction projects in reference to the City of Wildwood's municipal boundaries. *See* Exhibit B The second map depicts SSGC's and Leesburg's proposed natural gas infrastructure to be constructed in the service area, against a backdrop of the existing Peoples' natural gas distribution system and its claimed service area. *See* Exhibit C.

### **South Sumter Gas Company's and the City of Leesburg's Motions to Dismiss**

South Sumter Gas Company, LLC: SSGC asserts that Peoples' Petition does not properly state a cause of action because it has not complied with an essential pleading requirement. Specifically,

SSGC asserts that the Petition fails to plead a statement of all disputed issues of material fact, and characterizes the Petition as a collection of insufficient conclusory allegations.

SSGC states that the Petition fails to sufficiently allege minimum pleading requirements necessary to sustain a territorial dispute. SSGC asserts that the proximity of the new and planned Leesburg natural gas facilities to those operated by Peoples does not create a dispute; that Peoples did not allege that it has construction notices that conflict with those of Leesburg; that Peoples failed to allege that there is a race of competing facilities; and that Peoples did not allege that it has facilities within the locations identified by the construction notices.

SSGC suggests that the mere fact that the new Peoples' natural gas distribution facilities within the Village of Fenney are located near the separately noticed Leesburg facilities within Southern Oaks is not evidence that a dispute exists. SSGC seeks to rely upon Commission Order No. PSC-98-0174-FOF-EU, issued January 28, 1998, in Docket No 930885-EU, *In re: Petition to resolve territorial dispute with Gulf Coast Electric Cooperative, Inc. by Gulf Power*, Docket No. 930885-EU, *affirmed on appeal, Gulf Coast Electric Cooperative v. Johnson*, 727 So. 2d 259 (1999), where the Commission held that territorial disputes will be resolved on a case-by-case basis. SSGC argues that unlike the situation in *Gulf Coast-Gulf Power*, Peoples has not provided evidence or allegations of its legal right to serve the area, that the mere physical proximity of one utility's infrastructure to another does not make for duplicative facilities, and that Peoples failed to allege uneconomic duplication of facilities.

SSGC also relies upon *Gulf Coast-Gulf Power* to support its assertion that the Petition should be dismissed for ripeness, citing the two-prong test for ripeness in *Nat'l Park Hospitality Ass'n v. DOI*, 538 U.S. 803, 807, 123 S. Ct. 2026, 155 L.Ed.2d 1017, (2003). SSGC challenges the premise that the Petition is based upon a prima facie dispute by declaring that there is no dispute and that therefore the matter is not ripe for adjudication. SSGC asserts that the facts do not support a request for a sweeping determination for a service provider to serve all future portions of the Villages Community over many years. SSGC argues that this issue is not yet fit for a judicial decision and that the Commission's ability to adjudicate this matter would be enhanced by allowing more time for these events to unfold. SSGC states that the second part of the ripeness test would be the hardship that Peoples would suffer if the Commission "withholds a decision" (fails to act). SSGC asserts that Peoples will not suffer a hardship and that Peoples has not alleged any direct harm.

SSGC's final argument is that Peoples has not alleged that its service to the customers in the disputed area would be in the public interest. SSGC also suggests that the developer, with decades of experience, is in the best position to determine who the best service provider would be for the community within this service area.

The City of Leesburg: Leesburg claims that Peoples has failed to plead sufficient facts for the matter to move forward. Leesburg summarizes its argument by stating that Peoples has merely asserted a territorial dispute without pleading all disputed facts as required. Leesburg asserts that Peoples has not made sufficient factual allegations that warrant the Commission's involvement in determining which utility should serve the disputed area. Leesburg alleges that the facts supporting the alleged dispute are missing from the pleadings because they do not exist.

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Leesburg also states that the Commission should be hesitant to inject itself into a business dispute. Leesburg suggests that where market forces are at work to determine the manner in which the expansion of facilities is going to take place, the Commission is not required to step in and conduct centralized planning. Leesburg states that there is no need in the present situation for the Commission to respond to the request to resolve the territorial dispute, this is because customer choice and market forces are already at work to select the utility to serve this area.

### **Peoples' Response to the Motions to Dismiss**

Peoples disagrees with SSGC's assertion the Petition must comply with the general pleading requirements in Rule 28-106.201, F.A.C., which applies primarily to petitions requesting a hearing on a proposed agency action (PAA). However, Peoples does state that if this case were decided under Rule 28-106.201, F.A.C., then its petition meets the pleading requirements in accordance with Commission Order No. PSC-06-0260-PCO-EI, issued March 28, 2006, in Docket No. 060038-EI, *In re Petition for Issuance of a Storm Recovery Financing Order*, where the Commission held that "A petitioner filing an original request for relief cannot reasonably be expected to identify all disputed issues of material fact that might arise."

According to Peoples, its Petition contains a statement of the ultimate facts that satisfy the specific pleading requirements within Rule 25-7.0472, F.A.C. (Territorial Disputes for Natural Gas Utilities), which provides that a territorial dispute may be initiated by a petition and that each utility that is a party to a territorial dispute shall provide a map and written description of the disputed area along with the conditions that caused the dispute. Peoples argues that SSGC's natural gas infrastructure is being installed immediately adjacent to infrastructure belonging to Peoples and that Leesburg is building a 6-inch main line to serve the area in question. The Petition also contains a written agreement between SSGC and Leesburg for natural gas service in the area adjacent to the community where Peoples already provides service. Peoples asserts that a common sense reading of its Petition, the attached agreements, building permits, and maps establish that Peoples is the utility who can best serve the adjacent community. Peoples asserts that it has met the burden of providing a sufficient statement of facts upon which the Commission can evaluate the territorial dispute.

Peoples also takes exception to SSGC's and Leesburg's interpretation of the Commission's ruling in *Gulf Coast-Gulf Power* and points out that on appeal, the court held that the Commission was not required as a matter of law to "establish territorial boundaries in order to resolve a territorial dispute that does not involve service to current or future identifiable customers." *Gulf Coast-Gulf Power*, 727 So. 2d at 264. Peoples distinguishes the scenario in *Gulf Coast-Gulf Power*, which involved disparate locations that had no customers, by pointing out that customers within the disputed service area were easily identifiable as the homeowners within those specific developments that the Villages is constructing immediately adjacent to its prior developments being served by Peoples.

Peoples argues that SSGC's and Leesburg's positions that the Villages has found a better financial arrangement with another gas company, indicates that there is a bona fide territorial dispute. Peoples states that it is the conduct of SSGC and Leesburg that has created a territorial dispute and that the Commission should allow Peoples' Petition to move forward.



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### **Staff's Analysis and Recommendation**

Peoples' petition states a cause of action upon which relief can be granted, and it meets the requirements of Rules 28-106.201 and 25-7.0472, F.A.C. The Petition sets forth that a gas infrastructure is being installed by SSGC in a People's natural gas service area, that the area in question is adjacent to Peoples' natural gas infrastructure, that Peoples already has a non-exclusive franchise with the City of Wildwood to provide natural gas service to the area, and that there is an agreement between Leesburg and SSGC in which Leesburg is to supply gas to the area.

The Petition and its attachments indicate that Leesburg is in the process of building a 6-inch main line that is 6.25 miles in length to the service area from its distribution line serving Coleman Prison, and that together with SSGC, the overall length of all proposed natural gas piping being constructed in the service area is approximately 29 miles.

When viewed within the "four corners of the complaint" exclusive of all affirmative defenses/responses, assuming all alleged facts are true, and in the light most favorable to Peoples, staff believes that the Petition states a cause of action that would invoke the Commission's jurisdiction and permit the Commission to grant the relief requested. Specifically, the Petition contains sufficient allegations such as customer preference and cost to serve, to allow the Commission to review the Petition to Resolve the Territorial Dispute in accordance with Rule 25-7.0472, F.A.C.

Section 366.04(3)(b), F.S., grants jurisdiction to the Commission to resolve, upon petition of a utility or on its own motion, any territorial dispute involving service areas between and among natural gas utilities. In the instant case, Peoples' Petition establishes that a territorial dispute exists pursuant to Section 366.04(3)(b), F.S. The Petition contains adequate information in the form of an agreement, construction notices, ordinance, permits, and maps to indicate that an active dispute exists as to who will provide natural gas to the disputed service area. A review of the maps attached to the Petition further illustrates that this is a fully formed territorial dispute over the contested service area. *See Exhibits A-C.*

Rule 25-7.0472(2)(c-e), F.A.C., requires the Commission, when resolving territorial disputes, to consider the cost of each utility to provide natural gas service to the disputed area presently and in the future. Among the many factors that the Commission considers in a territorial dispute, customer preference is considered if all other factors related to the costs are substantially equal.

### **Conclusion**

For the reasons set forth above, the Commission should deny SSGC and Leesburg's motions to dismiss Peoples' Petition.

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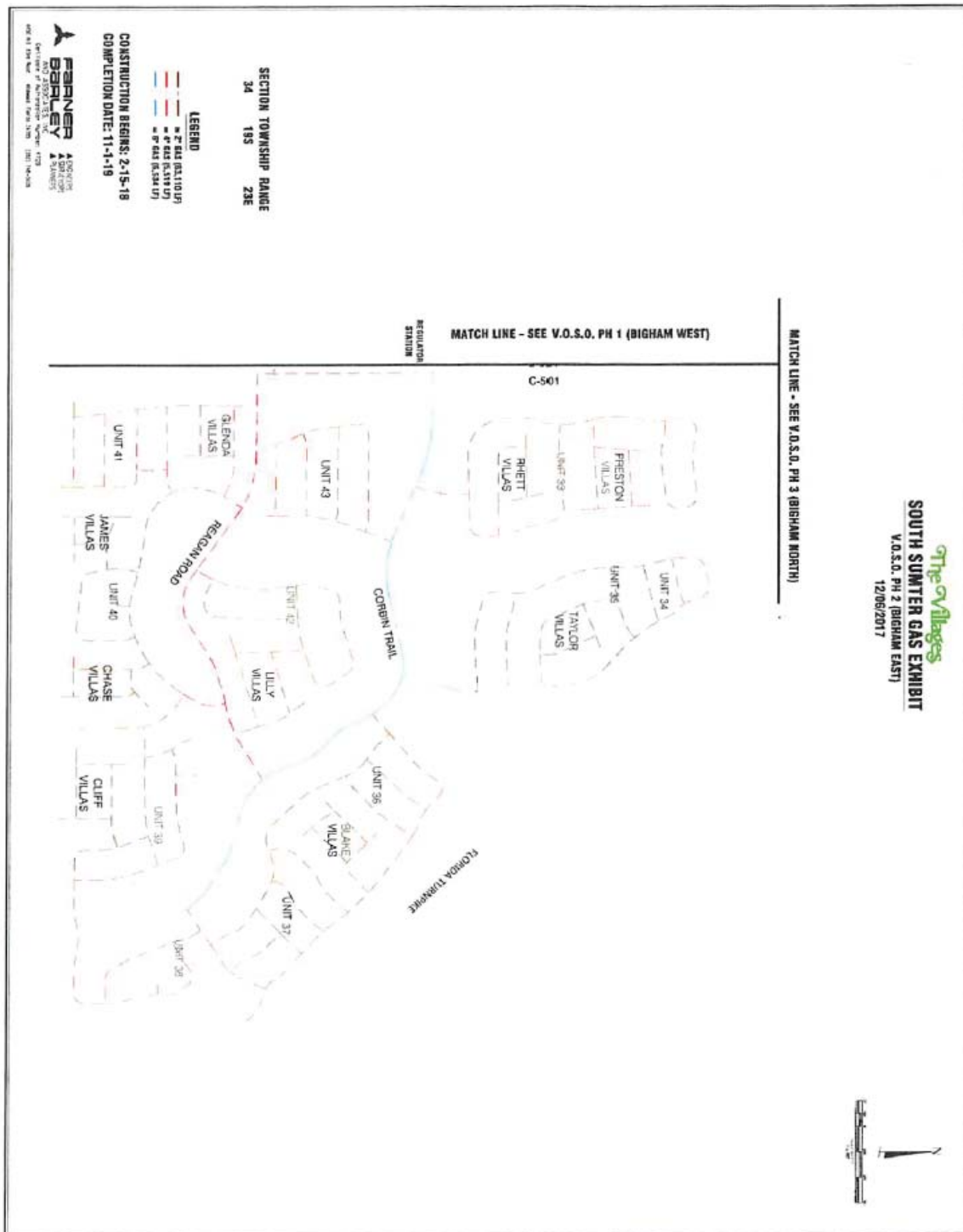
**Issue 3:** Should this docket be closed

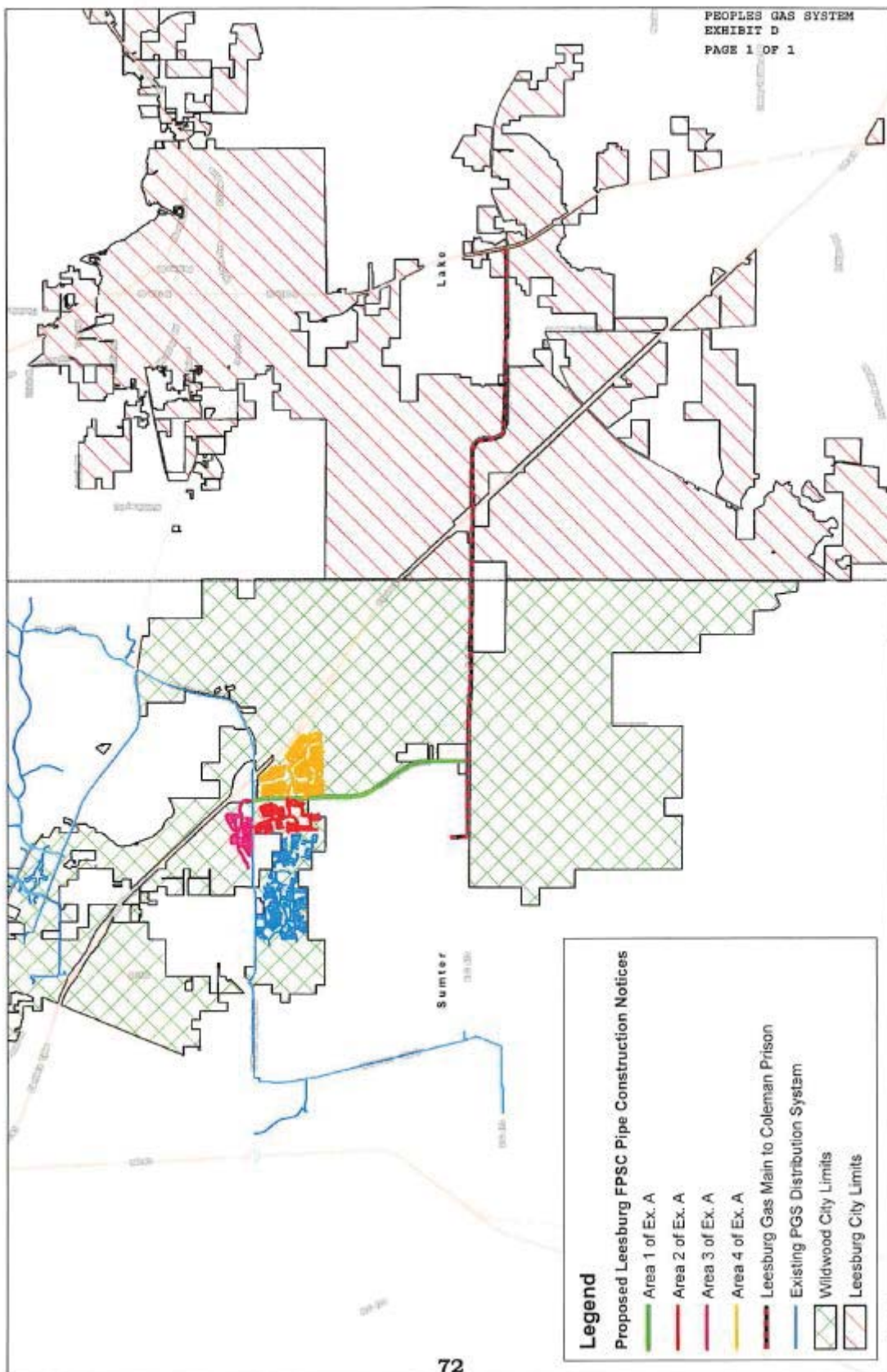
**Recommendation:** If the Commission denies SSGC's and Leesburg's motions to dismiss, the docket should remain open to address Peoples' petition to resolve the territorial dispute. Alternatively, if the Commission votes to grant the motions to dismiss, the docket should be closed upon the issuance of a final order. (Trierweiler)

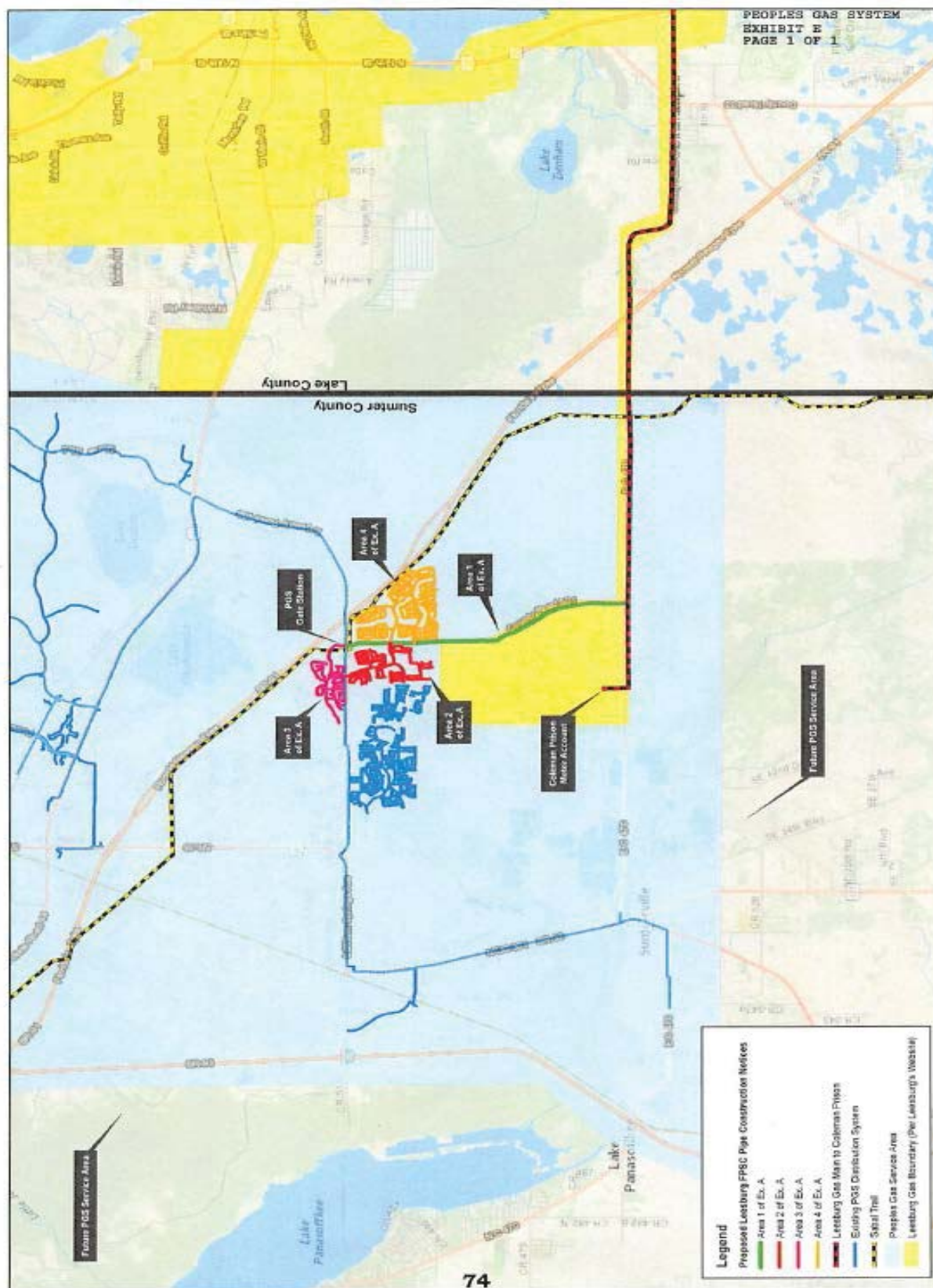
**Staff Analysis:** If the motions are denied, this docket should remain open to address Peoples' petition to resolve the territorial dispute. If the motions are granted, the docket should be closed after issuance of the final order.



PEOPLES GAS SYSTEM  
EXHIBIT A  
PAGE 3 OF 3  
AREA 4 OF EXHIBIT E







# Item 3



State of Florida



## Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD  
TALLAHASSEE, FLORIDA 32399-0850

**-M-E-M-O-R-A-N-D-U-M-**

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**DATE:** May 23, 2018

**TO:** Office of Commission Clerk (Stauffer)

**FROM:** Office of the General Counsel (Harper, Trierweiler) *Att WK7 SMC.*  
Division of Economics (Draper) *ED*

**RE:** Docket No. 20180085-GU – Petition by Peoples Gas System for issuance of an order to the City of Leesburg and South Sumter Gas Company, LLC, to show cause why they should not be regulated by the Commission as a public utility as defined in Section 366.02(1), F.S., etc.

**AGENDA:** 06/05/18 – Regular Agenda – Motions to Dismiss – Oral Argument Requested

**COMMISSIONERS ASSIGNED:** All Commissioners

**PREHEARING OFFICER:** Polmann

**CRITICAL DATES:** May not be deferred – statutory deadline for issuing final order on declaratory statement is July 1, 2018

**SPECIAL INSTRUCTIONS:** Place after Docket No. 20180055-GU

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### Case Background

On April 2, 2018, Peoples Gas System (Peoples) filed a petition pursuant to Sections 120.565, 366.02(1) and 366.04(3)(b), Florida Statutes (F.S.), requesting that the Commission issue an order to show cause the City of Leesburg (Leesburg) and South Sumter Gas Company (SSGC) as to why they should not be regulated by the Commission as a public utility as defined in Section 366.02(1), F.S. The Petition also requests that, in the alternative, the Commission issue a declaratory statement as to which utility, either Leesburg or SSGC, Peoples should negotiate with in an effort to resolve the territorial dispute initiated by Peoples in Docket No. 20180055-GU (Petition to resolve territorial dispute in Sumter County and/or Lake County with City of

Leesburg and/or South Sumer Gas Company, LLC by Peoples Gas System). SSGC and Leesburg requested intervention in this docket.

On April 26, 2018, SSGC filed a motion to dismiss Peoples' Petition (SSGC's motion to dismiss) and a motion for oral argument. On the same day, Leesburg also filed a motion to dismiss Peoples' Petition (Leesburg's motion to dismiss) and a motion for oral argument. On May 3, 2018, Peoples filed responses to SSGC's and Leesburg's motions.

This recommendation addresses whether the Commission should grant SSGC's and Leesburg's motions to dismiss. Pursuant to Section 120.565(3), Florida Statutes (F.S.), a final order on the Petition for Declaratory Statement must be issued within 90 days, which is July 1, 2018. The Commission has jurisdiction pursuant to Section 120.565 and Chapter 366, F.S.

### **Discussion of Issues**

**Issue 1:** Should oral argument on SSGC's and Leesburg's Motions to Dismiss be granted?

**Recommendation:** Yes. Oral argument on SSGC's and Leesburg's Motions to Dismiss should be granted. The parties should be allowed 5 minutes per side to make their arguments. (Harper)

**Staff Analysis:** Procedural Rule 25-22.0022(1), F.A.C., provides that a request for oral argument should be timely filed and shall state with particularity why oral argument would aid the Commission in understanding and evaluating the issues to be decided. Rule 25-22.0022(7), F.A.C., states that oral argument at the Agenda Conference will be entertained for dispositive motions such a motions to dismiss. SSGC's and Leesburg's requests for oral argument on their motions were timely filed. SSGC's and Leesburg's motions request 10 minutes be allowed for oral argument.

Peoples filed a response in opposition to the requests for oral argument, stating that oral argument would not assist the Commission in its ruling on the motions. However, Peoples asks that if the Commission decides to grant oral argument that Peoples be given an amount of time equal to the time granted to SSGC and Leesburg.

Rule 25-22.0022(3), F.A.C. provides that granting or denying a request for oral argument is within the sole discretion of the Commission. Staff believes that oral argument will assist the Commission in understanding and evaluating issues and arguments raised in the motions. If oral argument is granted, 5 minutes for each side appears to be reasonable.

Date: May 23, 2018

**Issue 2:** Should the Commission grant SSGC's and Leesburg's Motions to Dismiss Peoples' Petition?

**Recommendation:** Yes. The Commission should grant SSGC's and Leesburg's Motions to Dismiss. (Harper)

**Staff Analysis:** The Commission should dismiss Peoples' Petition because: (1) staff does not believe the Commission should exercise its discretion to issue a show cause order in this docket; and (2) the alternative request for a declaratory statement does not meet the necessary requirements for a declaratory statement. Staff's analysis is discussed in detail below.

### **Peoples' Petition**

The first part of Peoples' Petition asks the Commission to issue an order or orders to show cause Leesburg and SSGC for acting as a public utility. The Petition states that Leesburg is a Florida municipality which operates a natural gas distribution system in a portion of Lake and Sumter Counties and is a "natural gas utility" as defined by Section 366.04(3)(c), F.S., subject to the Commission's statutory jurisdiction. The Petition states that SSGC is a Florida limited liability company formed on or about March 22, 2017, and Peoples believes SSGC currently provides no natural gas service and has no customers.

Peoples' Petition alleges that Leesburg and SSGC have entered in an agreement for the construction, purchase, and sale of certain natural gas distribution facilities for the purpose of providing natural gas service to customers located within the service area described by the agreement. The Petition states Leesburg will pay to SSGC each month a portion of the revenues charged to natural gas customers within the service area (i.e., they will share the revenues from the provision of natural gas service to the customers in the service area). Peoples' Petition further states that the City of Leesburg has adopted an ordinance, Section 22-250 of the City's Code of Ordinances, which establishes the rates to be charged to Leesburg customers within the service area pursuant to the agreement between Leesburg and SSGC.

Peoples attached the agreement between SSGC and Leesburg to its Petition. Peoples' Petition argues that the agreement between SSGC and Leesburg is evidence that SSGC and Leesburg are acting as a public utility. For example, Peoples cites Section 366.02(1), F.S. which defines a public utility:

... every person, corporation, partnership, association, or other legal entity and their lessees, trustees, or receivers supplying...gas...to or for the public within this state.

Peoples argues that while according to the plain meaning of the statute a municipality such as Leesburg is not a public utility, a partnership, association, or other legal entity which supplies natural gas to the public is a public utility under Section 366.02(1), F.S. Peoples states that Section 366.02, F.S., does not define the terms partnership, association, other legal entity, but Peoples submits that by the plain and reasonable reading of those words, the agreement between SSGC and Leesburg meets that description.



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Peoples' Petition also states that the nature of the agreement is such that SSGC and Leesburg are partnering or associating to supply gas to the public. Peoples states that there is no purchase price or closing date in the contract, and, unlike a typical purchase and sale agreement, this agreement contemplates a continuing association between SSGC and Leesburg for an initial term of up to 30 years for the supply of natural gas to the public, thereby usurping or circumventing the regulatory power of either the Commission or the Leesburg City Commission.

The second part of Peoples' Petition is a request, in the alternative, for a declaratory statement. Peoples seeks a declaratory statement from the Commission as to which utility (Leesburg or SSGC, or a partnership, joint venture or other legal entity created by the agreement between the two) Peoples should negotiate with in an effort to resolve the territorial dispute in Docket No. 20180055-GU, which is the Commission docket established to resolve the territorial dispute between Peoples and SSGC and Leesburg. Peoples alleges that the Commission's determination of which utility (Leesburg or SSGC) it must work with to resolve the dispute described in the territorial dispute docket (Docket No. 20180055-GU) will affect its substantial interests.

Peoples' Petition states that a declaratory statement "will involve the Commission's determination as to whether the Agreement creates a separate entity which is a 'public utility' as defined Section 366.02(1), Florida Statutes." Peoples refers to Section 180.06, F.S., in its Petition, stating that the section lists the activities authorized by municipalities and "private companies" such as SSGC. Peoples concludes that it is "in doubt regarding which of SSGC, Leesburg, or another entity create by the agreement, should have sought Peoples' consent to the Construction of the System, which is ongoing."

### **SSGC's and Leesburg's Motions to Dismiss**

SSGC argues that the Commission should decline the invitation to issue the requested show cause order. SSGC states that the Commission has the right to initiate a show cause proceeding, not a party. Further, SSGC argues that a show cause order would be inappropriate because Peoples' failed to plead sufficient facts as to a violation of order, rule, or statute.

SSGC argues that Peoples' alternative request for declaratory statement should be denied because the requested declarations would require a resolution of pending, disputed issues, which would be inconsistent with the purpose and intention of the declaratory statement statutes and rules. SSGC also states that the declarations sought by Peoples' Petition are directed solely to the conduct of third persons: SSGC and Leesburg. Further, SSGC argues that Peoples' request for declaratory statement is dependent on speculative and uncertain facts and events that affect the future actions of third parties rather than Peoples' own particular facts and situation.

Additionally, SSGC argues that Peoples is attempting to utilize the declaratory statement procedures to resolve the pending litigation in its favor rather than as a means to avoid litigation. SSGC states that the subject matter of the declaration request by Peoples is the same subject matters at issue in Docket No. 20180055-GU and, thus, cannot be resolved by declaratory statement.

Like SSGC, Leesburg argues that the Peoples' requested show cause order is unnecessary. Leesburg states that many of Peoples' allegations are disputed in Docket No. 2018055-GU and,

thus, should be addressed in that docket only. In addition, Leesburg argues that Peoples' declaratory statement petition should be dismissed because Peoples' Petition inappropriately requests the Commission to opine on the conduct of Leesburg and SSGC and matters that are currently pending in Docket No. 20180055-GU. Additionally, Leesburg states that Peoples' request for declaratory relief asks the Commission to interpret Section 180.06, F.S., which is not applicable to the facts and should not be considered in the analysis of the declaratory statement.

### **Peoples' Response to SSGC's and Leesburg's Motions to Dismiss**

Peoples asserts that SSGC and Leesburg are acting as a public utility. Peoples argues it has properly stated a cause of action in its Petition for issuance of a show cause order. Peoples admits that the underlying facts alleged in its Petition involve SSGC and Leesburg, but argues that it seeks Commission guidance concerning which entity Peoples needs to resolve the dispute with and which entity would be responsible for seeking consent from Peoples for operation of a system under Section 180.06, F.S. Peoples also argues that while it is true that Docket No. 20180055-GU and its Petition in this docket involves similar matters, there is little chance for inconsistent rulings. Peoples states that unless the Commission declares that it intends to either consolidate the two dockets or resolve the issues raised by Peoples' Petition in this docket, it would be appropriate for the Commission to issue the orders to show cause and/or a declaratory statement in this docket.

Peoples' response to Leesburg's Motion to Dismiss reiterates its belief that SSGC and Leesburg are jointly selling natural gas to the public and are acting as a public utility. Peoples also argues that an answer to its requested declaratory statement is necessary because Leesburg's motion highlights the need for clarity as to the applicability of Section 180.06, F.S., which Peoples states applies to activities involved with building a natural gas distribution systems.

### **Standard of Review for Motion to Dismiss**

A motion to dismiss raises as a question of law the sufficiency of the facts alleged in a petition to state a cause of action. *Varnes v. Dawkins*, 624 So. 2d 349, 350 (Fla. 1st DCA 1993). The standard to be applied in disposing of a motion to dismiss is whether, with all allegations in the petition assumed to be true, the petition states a cause of action upon which relief may be granted. *Id.* When making this determination, all reasonable inferences drawn from the petition must be made in favor of the petitioner. *Id.* All of the elements of a cause of action must be properly alleged in a pleading that seeks affirmative relief. If they are not, the pleading should be dismissed. *Kislak v. Kreedian*, 95 So. 2d 510 (Fla. 1957).

In determining the sufficiency of the petition, the Commission must confine its consideration to the petition and the grounds asserted in the motion to dismiss. *Flye v. Jeffords*, 106 So. 2d 229 (Fla. 1st DCA 1958). Moreover, the Commission must construe all material facts and allegations in the light most favorable to the petitioner in determining whether the petition is sufficient. *Matthews v. Matthews*, 122 So. 2d 571 (Fla. 2d DCA 1960).

### **Staff's Analysis and Recommendation**

Staff recommends that the Commission grant SSGC's and Leesburg's Motions to Dismiss Peoples' request for show cause orders. The decision to issue a show cause order lies with the

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Commission, not parties.<sup>1</sup> Staff does not believe that the Commission should exercise its discretion to issue a show cause order at this time. Docket No. 20180055-GU is in its initial stages and discovery has not yet occurred. As the record is developed in Docket No. 20180055-GU, staff will have the opportunity to review and monitor the evidence and issues presented. If any matter appears to rise to the point where a show cause order is necessary, staff will bring the matter to the Commission for consideration.

Staff also recommends that Peoples' alternative Petition for Declaratory Statement be dismissed. The purpose of a declaratory statement is to allow a petitioner to select a proper course of action in advance to avoid costly administrative litigation. *See Chiles v. Department of State, Division of Elections*, 711 So. 2d 151, 154 (Fla. 1st DCA 1998).<sup>2</sup> Peoples filed its request for a declaratory statement after it initiated litigation against Leesburg and SGCC in Docket No. 20180055-GU. Peoples' Petition then asks the Commission to declare who it should litigate against, either Leesburg or SSGC. However, it appears Peoples has already answered its own question as to whom to litigate against. Therefore, a declaratory statement is neither necessitated nor would it be helpful to avoid litigation.

Moreover, a declaratory statement is not an appropriate remedy where there is related pending litigation. *Couch v. Florida Dept. of Health and Rehabilitative Services*, 377 So. 2d 32 (Fla. 1st DCA 1979). Because Peoples filed its request for a declaratory statement after it already initiated litigation against Leesburg and SGCC in Docket No. 20180055-GU, it is inappropriate for the Commission to opine in a declaratory statement on the same matters. "[T]he rule is declaratory statement proceedings are not properly filed on issues simultaneously litigated in judicial or other administrative proceedings." *Gopman v. Dep't of Educ.*, 908 So. 2d 1118, 1123 (Fla. 1st DCA 2005).<sup>3</sup>

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<sup>1</sup>See Order No. PSC-10-0425-PCO-GU, issued Oct. 18, 2010, in Docket No. 100315, *In re: Complaint by Miami-Dade Cty. for Order Requiring Fla. City Gas to Show Cause Why Tariff Rate Should Not Be Reduced & for the Comm'n to Conduct A Rate Proceeding, Overearnings Proceeding, or Other Appropriate Proceeding Regarding Fla. City Gas' Acquisition Adjustment* where the Commission stated, "The purpose of our show cause procedures is to address specific instances where a utility knowingly refuses to comply with, or willfully violates, a specific Commission order, rule or statute and to bring the utility into compliance...the decision to invoke the Commission's show cause procedure is ultimately ours."

<sup>2</sup>See also *Department of Business and Professional Regulation, Div. of Pari-Mutual Wagering v. Investment Corp. of Palm Beach*, 747 So. 2d 374, 382 (Fla. 1999), where the court held, "A declaratory statement procedure is intended to enable members of the public to definitively resolve ambiguities of law arising in the planning of their future affairs and to enable the public to secure definitive binding advice as to the applicability of agency-enforced law to a particular set of facts."

<sup>3</sup>See also *Fox v. State, Board of Osteopathic Medical Examiners*, 395 So.2d 192 (Fla. 1st DCA 1981) (appropriate to deny petition for declaratory statement where issues raised currently pending in administrative hearings). See also *Exxon Mobile Oil Corp. v. Dep't of Agric. & Consumer Servs.*, 50 So. 3d 755 (Fla. 1st DCA 2010) (stating that an administrative agency must decline to provide a declaratory statement when the statement would address issues currently pending in a judicial proceeding). The purpose of a declaratory statement is to answer the petitioner's questions about how the statutes or rules apply to his own circumstances so that he may select a proper course of action. *Carr v. Old Port Cove Prop. Owners Ass'n, Inc.*, 8 So. 3d 403, 404 (Fla. 4th DCA 2009). See also In Commission Order 21301, issued May 31, 1989, in Docket No. 890415-EI, *In re: Petition of Tampa Electric Company for a declaratory statement regarding proposed transfer of service*, (the Commission denied TECO's request for declaratory statement, because the Commission found answering the request for declaratory statement was not likely to resolve all of previously pending issues.).

Date: May 23, 2018

Moreover, it is not proper for the Commission to issue a declaratory statement determining the conduct of third persons. Rule 28-105.001, F.A.C. Peoples' states in its request that an order by Commission declaring who it should negotiate with would require the Commission to declare whether SSGC and/or Leesburg are public utilities. Thus, a declaratory statement would affect the legal obligations and conduct of Leesburg and SSGC, in contravention of Rule 28-105.001, F.A.C.

Finally, Rule 28-105.001, F.A.C., allows a declaratory statement as a means to resolve a controversy covering the applicability of statutory provisions over which the agency has authority. In its Petition, Peoples seems to ask the Commission to interpret Section 180.06, F.S., a statute that is not enforced by the Commission. This would not be appropriate for a declaratory statement.

### **Conclusion**

For the reasons set forth above, the Commission should grant SSGC's and Leesburg's Motions to Dismiss Peoples' Petition.

**Issue 3:** Should this docket be closed?

**Recommendation:** If the Commission approves staff's recommendation in Issue 1, the docket should be closed. (Harper)

**Staff Analysis:** If the Commission approves staff's recommendation in Issue 1, a final order will be issued. Thus, the docket should be closed.

# Item 4



State of Florida



## Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD  
TALLAHASSEE, FLORIDA 32399-0850

**-M-E-M-O-R-A-N-D-U-M-**

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**DATE:** May 23, 2018

**TO:** Office of Commission Clerk (Stauffer)

**FROM:** Division of Accounting and Finance (Barrett) *MCB*  
Division of Economics (Guffey, Higgins) *WAM*  
Office of the General Counsel (Brownless) *ALM*  
*EST* *mm*

**RE:** Docket No. 20170231-EI – Petition for approval to transfer Martin-Riviera Lateral Pipeline to Florida Southeast Connection and implement associated rate adjustments, by Florida Power & Light Company.

**AGENDA:** 06/05/18 – Regular Agenda – Proposed Agency Action - Interested Persons May Participate

**COMMISSIONERS ASSIGNED:** All Commissioners

**PREHEARING OFFICER:** Clark

**CRITICAL DATES:** None

**SPECIAL INSTRUCTIONS:** None

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### Case Background

On October 31, 2017, Florida Power & Light Company (FPL or the Company) filed a Petition for Approval to Transfer the Martin-Riviera Lateral Pipeline to Florida Southeast Connection, LLC (FSC) and Implement Associated Rate Adjustments (FPL Petition). Attached to the FPL Petition were declarations and attachments from FPL witnesses Robert E. Barrett, Jr., Renae B. Deaton, and Sam A. Forrest.

On December 22, 2017, the President of the United States signed into law the Tax Cuts and Jobs Act (Public Law No. 115-97) (New Tax Law), which became effective January 1, 2018. The New Tax Law provided, among other things, for the reduction in federal income tax rates from 35 percent to 21 percent.



On February 14, 2018, FPL filed an Amended Petition for Approval to Transfer the Martin-Riviera Lateral Pipeline to Florida Southeast Connection, LLC and Implement Associated Rate Adjustments (Amended Petition). In its Amended Petition, FPL recalculated the data from its original pleading to conform with lower federal income tax rates, and updated the declarations and attachments.

The pipeline and the related equipment at issue in this proceeding is owned and operated by FPL, and stretches roughly 38 miles between 2 natural gas-burning generating stations in Florida. The 20" diameter natural gas pipeline originates at the Martin Next Generation Clean Energy Center (Martin Plant) located in Martin County, Florida, and terminates at the Riviera Beach Clean Energy Center (Riviera Plant) in Palm Beach County, Florida. The Martin-Riviera lateral pipeline entered commercial service on April 1, 2014, and is solely dedicated to providing natural gas to the Riviera Plant. The associated revenue requirements for the Martin-Riviera lateral pipeline are currently being recovered through FPL's base rates.

FSC is a FERC-regulated natural gas company that owns and operates a 126-mile interstate natural gas pipeline network in Florida. The Houston, Texas-based company is a wholly-owned subsidiary of NextEra Energy, Inc., and the proposed transfer would essentially extend FSC's current pipeline network from Osceola County, Florida, to the Riviera Plant in Palm Beach County, Florida.

By the original and amended petitions, the Company is implementing Paragraph 17 of the comprehensive Stipulation and Settlement Agreement that resolved the Company's 2016 rate case.<sup>1</sup> The Company seeks Commission approval to do the following:

1. Transfer ownership of the pipeline assets and related equipment from FPL to FSC; and
2. Implement base and cost recovery factor adjustments stated in Paragraph 17(b) of the Stipulation and Settlement Agreement and approve the associated tariff sheets, effective September 1, 2018.

The Commission's jurisdiction to consider this matter derives from the Commission's authority to set fair and reasonable rates, found in Section 366.05, Florida Statutes.

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<sup>1</sup>The 2016 Stipulation and Settlement Agreement was approved by Order No. PSC-2016-0560-AS-EI (Settlement Order), issued December 15, 2016, in Docket No. 20160021-EI, *In re: Petition for rate increase by Florida Power & Light Company*.

## Discussion of Issues

**Issue 1:** Should the Commission approve FPL's Amended Petition for approval to transfer the Martin-Riviera lateral pipeline to Florida Southeast Connection and implement the associated rate adjustments?

**Recommendation:** Yes. The Commission should approve FPL's Amended Petition to transfer the Martin-Riviera lateral pipeline to Florida Southeast Connection. The associated rate adjustments should become effective with the September 2018 billing cycle, which begins on September 1, 2018. The Commission should give staff authority to administratively approve the tariff sheets implementing the approved rate adjustments. (Barrett, Guffey, Higgins)

**Staff Analysis:** In early October 2016, FPL entered into a comprehensive Stipulation and Settlement agreement with certain parties in its rate case docket, Docket No. 20160021-EI. At that time, FPL proposed a conceptual framework for transferring the Martin-Riviera lateral pipeline to FSC which identified four conditions that needed to be met in order to implement the asset transfer:

1. FPL must seek the necessary regulatory approvals that would authorize it to transfer the pipeline asset with all related equipment and inventory to its affiliated FERC-regulated natural gas company, FSC, upon a showing that this transfer will result in customer savings on a cumulative present value revenue requirement (CPVRR) basis pursuant to FPL's negotiated contractual terms with FSC for firm gas transportation;
2. The Martin-Riviera pipeline assets are to be transferred at their net book value as of the transaction date;
3. FPL is to request approval to implement simultaneous changes to lower base rates and adjust fuel rates to reflect the projected transportation charges; and
4. FPL is to implement the base rate adjustment as a percentage reduction in base rates for every rate class.

FPL contends that it has met these conditions, and requests the Commission acknowledge September 1, 2018, as the effective date for all purposes.

## Purchase and Sale Agreements

In his original and amended declarations, witness Forrest explained that in addition to the principle sales agreement between FPL and FSC, a number of associated agreements were needed related to the provision of firm natural gas transportation service.<sup>2</sup> The principle sales agreement was signed and executed on October 27, 2017. An Amendment to this agreement was signed on February 9, 2018, setting the net book value and purchase price at \$167,415,732.

## Showing of CPVRR Cost Savings

Under the terms of the long-term natural gas transportation and service agreement between FPL and FSC, FSC will provide firm gas transportation service to FPL under a negotiated rate based

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<sup>2</sup>A total of four agreements are included in Attachment SAF-1, which accompanied the Amended Declaration of Sam A. Forrest. Staff notes that some information contained in Attachment SAF-1 is confidential.

on the maximum daily quantity of 300,000 dekatherms, which equals the quantity of natural gas FPL has available to it through its original ownership of the pipeline. In Attachment REB-1, witness Barrett provided an annualized summary of the CPVRR analysis FPL performed, which shows Net Customer Savings of \$4.4 million, based on using a natural gas transportation and service agreement with a total term of 40-years (2018-2057).<sup>3</sup> The 40-year term is based on an initial 24-year term for the contract, followed by three successive 5-year extensions. In its Response to Staff's First Data Request, the Company stated:

A term of 24 years was chosen so that the FPL contract with the Florida Southeast Connection (FSC) pipeline for gas transportation on the Riviera Lateral would sync up with FPL's existing contract for gas transportation on FSC's existing pipeline from the central Florida hub to the Martin Plant. The term of FPL's existing central Florida hub to Martin Plant agreement with FSC is 25 years effective July 1, 2017. If the Riviera Lateral transfer is effective on July 1, 2018, both of these contracts would have identical remaining terms. In addition, both contracts include the right for FPL to exercise up to three successive five year extensions resulting in the possibility a total of 40 years for the existing contract and 39 years for the Riviera Lateral contract.

In another response, FPL stated that the 40-year term is consistent with the current useful life of the divested pipeline asset.

As reflected in Attachment REB-1, the estimated depreciation expense (savings) of approximately \$65 million on a CPVRR basis, or approximately \$160 million on a nominal basis, is assumed to be generated by transferring the Martin-Riviera Lateral Pipeline. Staff verified that these amounts were appropriately calculated using currently-approved depreciation rates.<sup>4</sup> The Company's current depreciation rates were ordered as part of its 2016 Stipulation and Settlement Agreement.<sup>5</sup> The projected depreciation expense includes amounts related to both the Martin-Riviera Lateral, and a relatively small amount of forecasted capital expenditures in support of the pipeline.

### **Rate Impacts for Customers and Notification**

In her original and amended declarations, witness Deaton explained that simultaneous rate changes will impact customer bills for the period September through December 2018. As noted previously, FPL is currently recovering the revenue requirements for the Martin-Riviera pipeline lateral through the Company's base rates. Upon approval of the FPL Petition, the Company will no longer own this asset, and the lower revenue requirement will be reflected as a \$0.22 per

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<sup>3</sup>Staff notes that certain information contained in Attachment REB-1 is confidential. Although year-by-year data is provided in Attachment REB-1, this information is confidential, FPL acknowledged, however, that the Net Customer Savings result for individual years would show that in its CPVRR analysis is "front-end loaded with net savings in the initial years followed by net costs in the outer years."

<sup>4</sup>Order No. PSC-2016-0560-AS-EI, issued December 15, 2016, in Docket No. 20160021-EI, *In re: Petition for rate increase by Florida Power & Light Company*; Docket No. 20160061-EI, *In re: Petition for approval of 2016-2018 storm hardening plan, by Florida Power & Light Company*; Docket No. 20160062-EI, *In re: 2016 depreciation and dismantlement study by Florida Power & Light Company*; and Docket No. 20160088-EI, *In re: Petition for limited proceeding to modify and continue incentive mechanism, by Florida Power & Light Company*.

<sup>5</sup>Id.

month reduction to the Base Charge component of the bill for a residential customer using 1,000 kilowatt-hours of electricity. This reduction is coupled with an elevated Fuel Cost Recovery charge of \$0.20, which reflects the incremental amount of cost recovery necessary for FPL to recoup the cost of the natural gas transportation and service agreement it entered into with FSC, as shown in Column 6 of Table 1-1. No other billing components change, and the net difference is shown as a reduction of \$0.02/month, as illustrated in Table 1-1 below:<sup>6</sup>

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<sup>6</sup>The proposed changes for the instant petition are shown in Columns 5 and 6 of Table 1-1. For informational purposes, the billing changes that are proposed in FPL's Petition for Mid-Course Corrections to its 2018 Capacity and Environmental Cost Recovery Factors are shown in Columns 3 and 4 of Table 1-1. Also, the data in Table 1-1 does not reflect any of the storm-related charges attributable to named storms that impacted FPL's service territory in the 2017 hurricane season.

**Table 1-1**  
**FPL Typical 1,000-kWh Residential Customer Bill Comparison**  
**for the period July-December, 2018**

(1)	(2)	(3)	(4)	(5)	(6)
Component	Current April 2018	Proposed <sup>7</sup> July-August 2018	Net Difference <sup>8</sup>	Proposed <sup>9</sup> September- December 2018	Net Difference <sup>10</sup>
Base Charge	\$67.10	\$67.10	\$0.00	\$66.88	(\$0.22)
Fuel Cost Recovery	\$22.73	\$22.73	\$0.00	\$22.93	\$0.20
Energy Conservation Cost Recovery	\$1.53	\$1.53	\$0.00	\$1.53	\$0.00
Capacity Cost Recovery	\$2.57	\$2.34	(\$0.23)	\$2.34	\$0.00
Environmental Cost Recovery	\$1.58	\$1.22	(\$0.36)	\$1.22	\$0.00
Storm Restoration Surcharge	\$1.38	\$1.48	\$0.10	\$1.48	\$0.00
Interim Storm Restoration Surcharge	<u>\$0.00</u>	<u>\$0.00</u>	<u>\$0.00</u>	<u>\$0.00</u>	<u>\$0.00</u>
Subtotal	\$96.89	\$96.40	(\$0.49)	\$96.38	(\$0.02)
Gross Receipts Tax	<u>\$2.48</u>	<u>\$2.47</u>	<u>(0.01)</u>	<u>\$2.47</u>	\$0.00
<b>Totals</b>	<b><u>\$99.37</u></b>	<b><u>\$98.87</u></b>	<b><u>(\$0.50)</u></b>	<b><u>\$98.85</u></b>	<b>(\$0.02)</b>

Source: Attachment RDB-5, Page 1 of 1, filed February 14, 2018.

<sup>7</sup>Reflects approval of the Mid-Course corrections to Capacity and Environmental Cost Recovery Clause amounts, and a true-up adjustment in storm charges, as filed in Docket Nos. 20180001-EI and 20180007-EI.

<sup>8</sup>The Net Difference shown in Column 4 of Table 1 reflects the true-up adjustment in storm charges effective June 1, 2018, and the Mid-Course Corrections to Capacity and Environmental Cost Recovery Clause amounts, effective July 1, 2018. It does not reflect the instant petition (the Martin-Riviera Natural Gas Pipeline transfer), which is proposed to become effective September 1, 2018.

<sup>9</sup>Reflects approval of the proposed Martin-Riviera pipeline lateral transfer effective September 1, 2018, as filed in Docket No. 20170231-EI.

<sup>10</sup>The Net Difference shown in Column 6 of Table 1 reflects the true-up adjustment in storm charges effective June 1, 2018, the Mid-Course Corrections to Capacity and Environmental Cost Recovery Clause amounts, and the Martin-Riviera Natural Gas Pipeline transfer petition that is pending in this docket.

In FPL's Response to Staff's Fourth Data Request, the Company stated that it initially notified customers with bill inserts regarding this matter at about the time the petition was filed. The Company stated that:

. . . [as] is standard for all petitions that result in a change to customer bills, FPL will include a very short bill message on all customer bills 30 days in advance of the rates taking effect, and will provide updated rates schedules on its website ([www.FPL.com/rates](http://www.FPL.com/rates)) at the same time that will reflect all rate changes taking effect the following month.

Physical restrictions on bill inserts limit the amount of detail that can be included in such notifications, but FPL's customers can access detailed billing information from links on the Company's website.<sup>11</sup>

### **Summary and Conclusion**

As part of its consideration of the 2016 Stipulation and Settlement Agreement, the Commission evaluated and approved the conceptual framework for the transfer and simultaneous rate impacts described above. Staff has reviewed FPL's original and amended petitions, the original and amended declarations and attachments, and FPL's responses to Commission staff's four sets of data requests, and believes FPL's calculations are correct and the materials are reasonable.

Staff recommends that the Commission approve FPL's Amended Petition to transfer the Martin-Riviera lateral pipeline to Florida Southeast Connection. The associated rate adjustments should become effective with the September 2018 billing cycle, which begins on September 1, 2018. The Commission should give staff authority to administratively approve the tariff sheets implementing the approved rate adjustments.

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<sup>11</sup>Staff reviewed the customer notification materials used for residential and business customers, and believes they are appropriate.

**Issue 2:** Should this docket be closed?

**Recommendation:** This docket should be closed upon issuance of a consummating order, unless a person whose substantial interests are affected by the Commission's decision files a protest within 21 days of the issuance of the Commission's Proposed Agency Action Order. (Brownless)

**Staff Analysis:** This docket should be closed upon issuance of a consummating order, unless a person whose substantial interests are affected by the Commission's decision files a protest within 21 days of the issuance of the Commission's Proposed Agency Action Order.



# Item 5

State of Florida



## Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD  
TALLAHASSEE, FLORIDA 32399-0850

### -M-E-M-O-R-A-N-D-U-M-

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**DATE:** May 25, 2018

**TO:** Office of Commission Clerk (Stauffer)

**FROM:** Division of Accounting and Finance (D. Smith, Mouring)  
Division of Economics (Draper, Guffey)  
Division of Engineering (P. Buys, Graves, King)  
Office of the General Counsel (Cowdery)

**RE:** Docket No. 20170235-EI – Petition by Florida Power & Light Company for authority to charge FPL rates to former City of Vero Beach customers and for approval of FPL's accounting treatment for City of Vero Beach transaction.

Docket No. 20170236-EU – Joint petition to terminate territorial agreement, by Florida Power & Light Company and the City of Vero Beach.

**AGENDA:** 06/05/18 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

**COMMISSIONERS ASSIGNED:** All Commissioners

**PREHEARING OFFICER:** Clark

**CRITICAL DATES:** None

**SPECIAL INSTRUCTIONS:** None

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### Case Background

Florida Power & Light Company (FPL) is an investor-owned electric utility operating under the jurisdiction of this Commission pursuant to the provisions of Chapter 366, Florida Statutes, (F.S.). FPL provides generation, transmission, and distribution service to approximately 4.9 million retail customer accounts or an estimated 10 million people.

The City of Vero Beach's (COVB or City) electric utility is a municipally-owned electric utility providing service to customers through approximately 35,000 customer accounts using the COVB transmission and distribution facilities. The boundaries of the COVB service area are set pursuant to four Commission territorial orders that approved territorial agreements between COVB and FPL (Territorial Orders).<sup>1</sup> Approximately 60 percent of COVB's utility customers reside outside the City's municipal borders including customers residing in portions of unincorporated Indian River County (County), and portions of the Town of Indian River Shores (Town or Indian River Shores). In addition to the Commission-approved Territorial Orders, COVB operated in Indian River County and Indian River Shores under franchise agreements, which have since expired.<sup>2</sup> For many years, there has been controversy because customers living outside the City have wanted to be served by FPL because it has lower rates than COVB. The customers who live outside the City have argued that they have no ability to vote for the members of the COVB City Council and thus have no voice concerning the operation or management of the City's electric utility and no redress to any governmental authority.

Legislation was passed in 2008 that required a municipal electric utility meeting certain criteria to conduct a referendum of its customers on the question of whether a separate electric utility authority should be created to operate the business of the city's electric utility. Section 366.04(7), F.S. COVB did not conduct such a referendum because it alleged that it did not meet the criteria that would require it to conduct such a referendum. Further attempts to pass Legislation to address the concerns of COVB electric customers living outside the City failed in 2010 (HB 725 Mayfield/SB 2632 Negron; HB 1397 Mayfield); 2011 (HB 899 Mayfield); 2013 (HB 733 Mayfield/SB 1620 Garcia); 2014 (HB 813 Mayfield/SB 1248 Latvala; HB 861 Mayfield/SB 1294 Altman); 2015 (HB 773 Mayfield; HB 337 Mayfield/SB 442 Altman); and 2016 (HB 5790 Mayfield/SB 840 Simpson).

In 2009, a complaint was filed with the Commission by two COVB customers asking for a hearing to address Commission enforcement of Section 366.04, F.S., and review the territorial agreement between COVB and FPL.<sup>3</sup> The complaint alleged concerns about COVB's proposed changes to rates significantly higher than FPL's rates. The complaint also alleged that the City Council had entered into a series of ill-fated electric utility agreements and decisions that led to a small, outmoded and costly utility, that the City siphoned utility revenue for city budget purposes rather than utility operations or reserves, that over 60 percent of customers living outside the City

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<sup>1</sup> See Order No. 5520, issued August 29, 1972, in Docket No. 72045-EU, *In re: Application of Florida Power and Light Company for approval of a territorial agreement with the City of Vero Beach*; Order No. 6010, issued January 18, 1974, in Docket No. 73605-EU, *In re: Application of Florida Power & Light Company for approval of a modification of territorial agreement and contract for interchange service with the City of Vero Beach, Florida*; Order No. 10382, issued November 3, 1981 and Order No. 11580, issued February 2, 1983, in Docket No. 800596-EU, *In re: Application of FPL and the City of Vero Beach for approval of an agreement relative to service areas*; and Order No. 18834, issued February 9, 1988, in Docket No. 871090-EU, *In re: Petition of Florida Power & Light Company and the City of Vero Beach for approval of amendment of a territorial agreement*.

<sup>2</sup> Indian River County's franchise agreement with COVB expired in February 2017, and Indian River Shore's franchise agreement with COVB expired in November 2016. Staff has no information that new franchise agreements are in place.

<sup>3</sup> Docket No. 090524-EM, *In re: Complaint of Stephen J. Faherty and Glenn Fraser Heran against the City of Vero Beach for unfair electric utility rates and charges*.

had no voice with city elected officials, and that the City offered no conservation incentives such as rebates for installing more energy efficient appliances. The complaint was voluntarily dismissed in 2014 because of then on-going negotiations between FPL and COVB concerning the possible purchase and sale of COVB's electric system. However, these negotiations did not result in a sale.

By letter dated July 18, 2014, Indian River Shores advised COVB that it was taking several actions to achieve rate relief for its citizens who received electric service from the City. The Town filed a complaint against COVB in Indian River County Circuit Court Case No. 31-2014-CA-000748, one count of which asked the circuit court to declare that COVB was subject to and must comply with the requirement of Section 366.04(7)(a), F.S., to have a referendum. The lawsuit also challenged COVB's electric rates as unreasonable, oppressive, and inequitable, and raised "a Constitutional challenge regarding the denial of rights" to COVB electric customers living in Indian River Shores.

Following unsuccessful mediation between Indian River Shores and COVB pursuant to the Florida Governmental Conflict Resolution Act, Chapter 164, F.S.,<sup>4</sup> Indian River Shores filed an amended complaint asking the circuit court, in part, to declare that upon expiration of the franchise agreement giving COVB permission to provide electric service in Indian River Shores, COVB had no legal right to provide electric service in Indian River Shores. In its amended complaint, Indian River Shores alleged that COVB sought to exert extra-territorial monopoly powers and extract monopoly profits within the corporate limits of the Town of Indian River Shores without the Town's consent. The Town alleged that even though COVB's electric utility paid no corporate income taxes, no property taxes, had access to low cost financing subsidized by tax-free bonds, and was not subject to the costs of complying with state mandated energy efficiency and conservation requirements, COVB's electric rates had been some of the highest in Florida over the previous ten years, and were substantially higher than FPL's rates.

Indian River Shores further alleged that although FPL's electric rates were regulated by the Commission, COVB's rates were not regulated by the Commission but were managed by the COVB City Council. The amended complaint alleged that approximately 65 percent of COVB's electric customers were located outside of the City and thus had no voice in electing the official that managed the City's electric utility system and set their electric rates. The Town alleged that COVB's high electric rates were due to factors within the City's control, including (1) abdicating its operational and managerial responsibilities to entities with which it had entered into expensive long-term power supply arrangements without appropriate oversight and due diligence; (2) the City was bound to above-market power prices under the long-term power supply arrangements agreed to by the City; (3) the City administered its electric utility power supply without appropriate hedging, interest-rate swaps, and other risk management protocols needed to mitigate fuel price volatility and keep electric power costs as low as reasonably possible; and (4) electric utility revenues were diverted to COVB's general revenue fund as a means to keep ad valorem taxes on property within the City artificially low and to cover costs that had nothing to do with operation of the City's electric utility. Indian River Shores alleged

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<sup>4</sup> Indian River County also participated in this mediation.

that COVB had not operated its electric utility and furnished electric services in accordance with normally accepted electric utility standards, but rather had acted imprudently in its utility management.

COVB filed a motion to dismiss the circuit court franchise agreement claim, which the Commission supported in court as amicus curiae. On November 11, 2015, the circuit court granted the motion to dismiss, finding that the question of whether COVB had the authority to continue to provide electric service within Indian River Shores upon expiration of the franchise agreement was squarely within the Commission's jurisdiction to decide. The circuit court did not dismiss the count that COVB's electric rates were unreasonable. However, Indian River Shores subsequently voluntarily dismissed its lawsuit with prejudice.

In 2014, Indian River County filed a petition for declaratory statement with the Commission asking for a declaration that upon expiration of its franchise agreement with COVB in February, 2017, the County would have the right to choose its electricity provider. In its petition, Indian River County alleged that more than half of COVB's electric customers were outside the City limits in the unincorporated parts of the County, and that while the exemption from Commission jurisdiction for municipal utilities was understandable where the customers are all or mostly all city residents, the majority of COVB's customers had no political or regulatory recourse regarding COVB as their electric service provider. The County further alleged that the situation was especially egregious since COVB refused to hold a referendum under Section 366.04(7), F.S., or to otherwise create an electric utility authority that would include representation of non-city customers. The petition alleged that COVB's electric service to customers who lived outside the City in unincorporated Indian River County had become increasingly more contentious and controversial, that the non-city COVB electric customers who receive no city services were contributing two-thirds as much revenue to general government as is generated by the City's property taxes, and that COVB's rates were approximately one-third higher than FPL's rates. The Commission denied this petition for failing to meet the statutory requirements necessary to obtain a declaratory statement.<sup>5</sup>

Also in 2014, COVB filed a petition with the Commission asking for a declaration that upon expiration of its franchise agreement with the County, it would have the right and obligation to continue providing electric service in unincorporated Indian River County under the Commission-approved Territorial Orders. The Commission issued an order declaring that COVB has the right and obligation to continue to provide retail electric service in the territory described in its Territorial Orders upon expiration of its franchise agreement with the County.<sup>6</sup> The County appealed both orders, and both Commission orders were affirmed by the Florida Supreme Court.<sup>7</sup>

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<sup>5</sup> Order No. PSC-15-0101-DS-EM, issued February 12, 2015, in Docket No. 140142-EM, *In re: Petition for Declaratory Statement by the Board of County Commissioners, Indian River County, Florida*.

<sup>6</sup> Order No. PSC-15-0102-DS-EM, issued February 12, 2015, in Docket No. 140244-EM, *In re: Petition of Vero Beach for a Declaratory Statement Regarding Effect of Commission's Orders Approving Territorial Agreements in Indian River County*.

<sup>7</sup> *Board of County Commissioners of Indian River County v. Graham*, 191 So. 3d 890 (Fla. 2016).

On January 5, 2016, Indian River Shores filed a petition for declaratory statement with the Commission, asking for a declaration that the Commission lacks jurisdiction to interpret Article VIII, Section 2(c), Florida Constitution, for purposes of determining whether Indian River Shores has a constitutional right to be protected from COVB providing electric service within Indian River Shores without Indian River Shores' consent. In response, the Commission issued an order declaring that it had the jurisdiction under Section 366.04, F.S., to determine whether COVB had the authority to continue to provide electric service within the corporate limits of Indian River Shores upon expiration of the franchise agreement and that in a proper proceeding, the Commission has the authority to interpret the phrase "as provided by general or special law" as used in Article VIII, Section 2(c), Florida Constitution.<sup>8</sup>

On March 4, 2016, pursuant to Sections 120.57 and 366.04, F.S., Indian River Shores filed a Petition for Modification of Territorial Order Based on Changed Legal Circumstances Emanating from Article VIII, Section 2(c) of the Florida Constitution. Indian River Shores asked the Commission to modify the Territorial Orders between FPL and COVB by moving the entire Town of Indian River Shores out of COVB's service area and placing it within the electric service area of FPL. In its Petition, based on essentially the same specific allegations made in the Circuit Court Amended Complaint as detailed above, the Town argued that the Commission should modify the Territorial Orders because COVB was operating as an unregulated monopoly within the Town and subjected captive customers in the Town to excessive rates, inferior quality of services, and other monopoly abuses contrary to the public interest. The Town alleged that some of its citizens were served by FPL and some by COVB, and that, as a consequence, the Town's residents received vastly different service, at vastly different rates, with vastly different regulation and oversight, and that the current territory boundary pitted neighbor against neighbor and caused discord and confusion among Town residents.

Indian River Shores also alleged that having FPL as the single electric provider would allow all Town residents access to the energy conservation programs offered by FPL, give access to FPL's deployment of solar generation and smart meters, which were not offered by COVB and would dramatically reduce the utility costs to the Town's residents, and would provide the Town with the benefits of FPL's highly regarded management expertise and high customer satisfaction ratings. The petition alleged that the Town's residents were overwhelmingly in favor of having FPL as the single electric provider within the Town. The Commission issued a proposed agency action (PAA) order denying the petition for modification.<sup>9</sup> The Town of Indian River Shores filed a petition for administrative hearing on the PAA order and COVB filed a cross-petition. Upon joint motion of Indian River Shores and the City, the hearing proceeding is being held in abeyance pending closing on the purchase and sale of the COVB electric utility to FPL.

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<sup>8</sup> Order No. PSC-16-0093-FOF-EU, issued March 4, 2016, in Docket No. 160013-EU, *In re: Petition for declaratory statement regarding the Florida Public Service Commission's jurisdiction to adjudicate the Town of Indian River Shores' constitutional rights.*

<sup>9</sup> Order No. PSC-16-0427-PAA-EU, issued October 4, 2016, in Docket No. 160049-EU, *In re: Petition for modification of territorial order based on changed legal circumstances emanating from Article VIII, Section 2(c) of the Florida Constitution, by the Town of Indian River Shores.*

### **Procedural Background**

On November 3, 2017, FPL filed a petition in Docket No. 20170235-EI for authority to charge FPL's rates and charges to COVB customers and for approval of FPL's requested accounting treatment. As part of its petition, FPL filed testimony and exhibits of six witnesses. FPL's petition states that on May 16, 2017, FPL presented a letter of intent to COVB for the potential purchase of the City's electric utility system, which was subsequently executed by both parties. FPL states that, thereafter, FPL and the City negotiated an agreement for the sale of the COVB's electric utility assets. Negotiations were also held with the Florida Municipal Power Agency (FMPA) and the Orlando Utilities Commission (OUC) to resolve COVB's contractual obligations with those entities that would be necessary in order to close the transaction. On October 24, 2017, FPL and COVB entered into an Asset Purchase and Sale Agreement (the PSA). The PSA reflects COVB's and FPL's agreement to sell and to purchase the COVB electric utility system. Pursuant to the PSA, FPL will acquire assets of the COVB electric utility system for a cash payment of approximately \$185.0 million as well as other consideration.

The petition states that in connection with the PSA, COVB needs to address power contracts to which it is a party, including (1) a 20-year wholesale services agreement with OUC to provide supplementary power to COVB, due to expire in 2023 (Wholesale Services Agreement); and (2) a series of three contracts for the City's share of the FMPA generation entitlements from certain power plants, namely St. Lucie Unit 2 and Stanton Units 1 and 2 (collectively "FMPA Entitlements"). The petition further states that, pursuant to the provisions of the PSA, COVB's Wholesale Services Agreement with OUC and COVB's obligations to FMPA for the FMPA Entitlements would terminate upon the closing of the PSA. FPL states that, as part of the PSA and to enable the COVB to terminate its obligations with OUC, FPL negotiated a short-term power purchase agreement (PPA) with OUC for capacity and energy, commencing at the close of the PSA and extending through 2020.

FPL states in its petition that in order to implement the PSA, it is requesting that the Commission: (1) grant FPL approval to charge its approved rates and charges to the COVB customers; (2) approve the establishment and base rate recovery of a positive acquisition adjustment of approximately \$116.2 million with respect to the City's electric utility system acquired by FPL; and (3) approve recovery of costs associated with the short-term PPA with OUC. An acquisition adjustment is the difference between the purchase price paid to acquire a utility asset or group of assets and the depreciated original cost, or net book value, of those assets. A positive acquisition adjustment exists when the purchase price is greater than the net book value. With respect to the OUC PPA, FPL requests that the Commission: (1) approve recovery of the energy portion of charges through FPL's Fuel and Purchased Power Cost Recovery Clause; and (2) approve recovery of the capacity charges component through the Capacity Cost Recovery Clause.

In addition, on November 3, 2017, FPL and COVB filed a joint petition in Docket No. 20170236-EU for approval to terminate their Commission-approved territorial agreement. The joint petition alleges that termination of the territorial agreement is sought in connection with FPL's acquisition of the COVB electric utility and FPL's petition to charge FPL's approved rates and charges and for the approval of its requested accounting treatment.



Intervention of the Office of Public Counsel (OPC) in both dockets was acknowledged by Order Nos. PSC-2018-0145-PCO-EI (Docket No. 20170235-EI) and PSC-2018-0163-PCO-EU (Docket No. 20170236-EU).<sup>10</sup>

### **Commission Jurisdiction**

The Commission has jurisdiction over the matters raised in the petitions filed in Docket Nos. 20170235-EI and 20170236-EU pursuant to Sections 366.06 and 366.076, F.S. To be clear, FPL is not requesting and the Commission does not have jurisdiction over approval of the transfer of the City's electric utility assets to FPL. In the 1974 Grid Bill,<sup>11</sup> as part of the Legislature's regulatory regime over electric utilities, the Commission was given limited regulatory jurisdiction over municipal electric utilities. *See* 366.04(2), F.S. The Legislature gave the Commission authority over municipalities to prescribe uniform systems and classifications of accounts; to prescribe a rate structure for all electric utilities; to require electric power conservation and reliability within a coordinated grid, for operational as well as emergency purposes; to approve territorial agreements; to resolve territorial disputes; and to prescribe and require the filing of periodic reports and other data. The purchase and sale agreement between COVB and FPL is not subject to approval by the Commission.

Further, the Legislature did not give the Commission jurisdiction over municipal rates. *Lewis v. Public Service Commission*, 463 So. 2d 227 (Fla. 1985)(stating that the Commission's jurisdiction over rate structure does not include jurisdiction over the actual rates charged by a municipal electric utility). Because the Commission lacks this jurisdiction, it does not have authority to determine what COVB's electric rates should be or whether they are "too high" compared to FPL's current rates. The Florida Supreme Court has stated that as part of Florida's legislatively constructed regulatory regime, if customers of municipal electric utilities have complaints of "excessive rates or inadequate service their appeal under Florida law is to the courts or the municipal council." *Story v. Mayo*, 217 So. 2d 304, 308 (Fla. 1968), *cert. denied*, 395 U.S. 909 (1969).

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<sup>10</sup> Order No. PSC-2018-0145-PCO-EI, issued March 15, 2018, in Docket No. 20170235-EI, *In re: Petition by Florida Power & Light Company (FPL) for authority to charge FPL rates to former City of Vero Beach customers and for approval of FPL's accounting treatment for City of Vero Beach transaction*; Order No. PSC-2018-0163-PCO-EU, issued March 26, 2018, Docket No. 20170236-EU, *In re: Joint petition to terminate territorial agreement, by Florida Power & Light Company and the City of Vero Beach*.

<sup>11</sup> The Grid Bill codified the Commission's authority to approve and review territorial agreements involving investor-owned utilities and expressly granted the Commission jurisdiction over rural electric cooperatives and municipal electric utilities for approving territorial agreements and resolving territorial disputes. *See Richard C. Bellak and Martha Carter Brown, Drawing the Lines: Statewide Territorial Boundaries for Public Utilities in Florida*, 19 Fla. St. L. Rev. 407, 413 (1991).

## Discussion of Issues

**Issue 1:** Should the Commission grant FPL the authority to charge FPL's rates and charges to COVB's customers upon the closing date of the PSA?

**Recommendation:** Yes, the Commission should grant FPL the authority to charge FPL's approved rates and charges to COVB's customers effective upon the closing date of the PSA because they would become FPL customers. FPL should notify COVB's customers of the new rates and charges with the first bill containing the new rates. (Draper)

**Staff Analysis:** This issue addresses the request in the petition filed by FPL in Docket No. 20170235-EI to grant FPL the authority to charge its rates and charges to COVB's customers. The PSA provides for the COVB customers to become FPL electric customers and receive service at the applicable FPL rates and charges upon the closing of the PSA. Specifically, the PSA states that FPL has the responsibility for securing approval from the Commission for authority under Rule 25-9.044, F.A.C., to charge FPL's existing rates to the COVB customers.<sup>12</sup>

Rule 25-9.044(1), F.A.C., states that in the case of a change of ownership or control of a utility that places the operation under a different or new utility, the company which will thereafter operate the utility must adopt and use the rates, classifications, and regulations of the former operating company unless authorized to change by the Commission.

In response to staff's first data request, FPL provided bill comparisons between FPL and COVB customers. A COVB residential customer who becomes an FPL customer who uses 1,000 kilowatt hours (kWh) would see a bill decrease from \$126.10 to \$99.37, a decrease of \$26.73 or approximately 21.2 percent, based on rates effective March 2018.<sup>13</sup> COVB commercial and industrial customers would also see bill decreases based on usage.

Regarding customer notification, FPL explains that FPL's proposal to acquire the COVB electric utility has been the subject of public debate and discussion for nearly a decade up to the time when the City Council voted in favor of the sale in October 2017. FPL further states that the proposed sale of the COVB electric utility to FPL was addressed in two public referendums and during numerous publicly noticed City Council meetings. In addition, FPL states that it plans to hold two open houses before the transaction closes in order to address all customer questions and concerns.

Staff recommends that the Commission authorize FPL to charge FPL's approved rates and charges to the COVB customers effective upon the closing date of the PSA because they would become FPL customers. FPL should notify the COVB customers of the new rates and charges with the first bill containing the new rates. Staff believes, given the lengthy public debate regarding the proposed FPL/COVB transaction and the fact that FPL's current rates and charges

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<sup>12</sup> Document No. 09427-2017, Exhibit SAF-1, page 63.

<sup>13</sup> In its November 3, 2017 Petition, FPL states that a residential customer using 1,000 kWh per month would save \$16.34 per month. This calculation was based on September 2017 COVB bills and January 2018 FPL bills. In response to staff's first data request, FPL provided updated bill calculations based on rates effective March 2018.

are lower than the City's rates, customer notification with the first bill containing the new rates is sufficient.

**Issue 2:** Should the Commission approve the joint petitioners' request to terminate the existing territorial agreement between FPL and the City of Vero Beach upon the closing date of the PSA?

**Recommendation:** Yes, the Commission should approve the joint petitioners' request to terminate the existing territorial agreement between FPL and the City of Vero Beach effective upon the closing date of the PSA. Upon closing of the PSA, FPL should file revised tariff sheets Nos. 3.020, 3.010, and 7.020 to reflect the addition of the COVB service area to the description of territory and communities served. Commission staff should be given authority to administratively approve these tariff sheets consistent with the Commission's decision. (Guffey, Draper)

**Staff Analysis:** This issue addresses the joint petition of FPL and the City in Docket No. 20170236-EU to terminate their territorial agreement. The joint petition involves the transfer of customers from COVB to FPL. Section 366.04(2), F.S., gives the Commission the power to approve territorial agreements between municipal electric utilities and investor-owned electric utilities. Any modification or termination of a Commission-approved territorial order must be made by the Commission pursuant to its exclusive jurisdiction. *See Public Service Commission v. Fuller*, 551 So. 2d 1210, 1212 (Fla. 1989). The Commission has the responsibility to ensure that the termination of the territorial agreement and concomitant transfer of customers to FPL results in no harm or detriment to the public interest. *See AmeriSteel Corp. v. Clark*, 691 So. 2d 473, 478 (Fla. 1997), *Utilities Commission of the City of New Smyrna Beach v. Florida Public Service Commission*, 469 So. 2d 731, 732-33 (Fla. 1985). The public interest is the ultimate measuring stick to guide the Commission's decision. *Gulf Coast Electric Cooperative v. Johnson*, 727 So. 2d 259, 264 (Fla. 1999). Utility ratemaking is viewed as a matter of fairness. *GTE Florida Inc. v. Clark*, 668 So. 2d 971, 972 (Fla. 1996). The Commission should base its decision on the effect termination of the territorial agreement will have on all affected customers, both those transferred and those not transferred. *See New Smyrna Beach*, 469 So. 2d at 732.

The joint petition states that the petitioners seek termination of their existing territorial agreement in connection with FPL's acquisition of the COVB electric utility that is addressed in Docket No. 20170235-EU. The joint petition states that the termination of the territorial agreement will be effective if all conditions precedent to the PSA are satisfied and the transaction closes. If the territorial agreement is terminated, FPL will be serving all of Indian River County. If the PSA does not close, the joint petitioners will continue to operate pursuant to the Territorial Orders.

Currently, COVB serves 29,258 residential, 5,721 commercial, and 144 street light customers for a total of 35,123 customers. As discussed in Issue 1, FPL will provide electric service to COVB's customers at FPL's approved rates and charges upon the closing date of the PSA.

The joint petitioners state that FPL's purchase of COVB's electric system is projected to result in more economical service to both COVB's customers and FPL's current customers and, therefore, termination of the territorial agreement is in the public interest. COVB's existing service territory is surrounded by FPL's service territory. The joint petitioners state that the geographic

configuration will allow FPL to make efficient use of resources in providing electric service to COVB's customers. The joint petitioners further state that termination of the territorial agreement will result in excellent service reliability for COVB's customers. Additionally, the joint petitioners state COVB's residential and commercial customers will be eligible to participate in FPL's energy conservation programs and commercial customers will have the opportunity to enroll in economic development rates.

Regarding customer notification of the proposed termination of the territorial agreement, the joint petitioners explain that FPL's proposal to acquire the COVB electric utility has been the subject of public debate and discussion for nearly a decade. In addition, the joint petitioners state that FPL plans to hold two open houses before the transaction closes in order to address all customer questions and concerns, including termination of the territorial agreement.

### **Conclusion**

Staff recommends approval of the joint petitioners' request to terminate the existing territorial agreement between FPL and COVB effective upon the closing date of the PSA. Staff believes that termination of the territorial agreement results in no harm or detriment to the public interest. Upon closing of the PSA, FPL should file revised tariff sheets Nos. 3.020, 3.010, and 7.020 to reflect the addition of the COVB service area to the description of territory and communities served. Commission staff should be given authority to administratively approve the tariff sheets consistent with the Commission's decision.

**Issue 3:** Should the Commission authorize FPL to recognize a positive acquisition adjustment on its books associated with the purchase of the COVB electric utility system?

**Recommendation:** Yes. The extraordinary circumstances demonstrated in this case support approval for FPL to record a positive acquisition adjustment in the amount of \$21.3 million on its books in Federal Energy Regulatory Commission (FERC) Account 114 - Electric Plant Acquisition Adjustments and to amortize this amount over the requested period of 30 years. (D. Smith, Cowdery)

**Staff Analysis:** As explained in the Case Background, the Commission does not have jurisdiction over the transfer of the COVB's electric utility assets to FPL. The narrow question before the Commission is whether FPL's proposed accounting treatment should be approved.

### Legal Standard

The Commission's policy with respect to acquisition adjustments has been to evaluate the specific facts and circumstances on an individual case by case basis and to determine whether there are extraordinary circumstances that warrant the approval of a positive acquisition adjustment. This policy as applied to electric investor-owned utilities is explained in Order No. PSC-92-1468-FOF-EU, where the Commission analyzed the issue of allowing a positive acquisition adjustment in the case of the acquisition of the Sebring Utilities Commission (Sebring) electric system by Florida Power Corporation (FPC).<sup>14</sup> In that case, FPC purchased the Sebring electric system for \$54.0 million, paying a premium of approximately \$36.5 million over the net book value (NBV) of \$17.5 million.

As described in the 1992 FPC/Sebring Order, Sebring was in serious financial distress, with debt service bringing it to the verge of bankruptcy. Sebring was in default of its bond covenants and its rates were not sufficient to cover the debt service and maintain required reserve margins. Sebring's rates were the highest in the state, and to comply with its bond covenants would require an estimated thirty-seven percent rate increase, raising the typical residential electric bill to \$151 per 1,000 kWh. The Commission determined that extraordinary circumstances existed for allowing a positive acquisition adjustment because the acquisition of the Sebring electric system represented the most reasonable resolution of Sebring's financial problems.

The Commission approved a going concern value of \$5.7 million as the value above NBV which reasonably could be approved as benefitting the general body of FPC's existing customers. In its decision, the Commission quoted the Florida Supreme Court in *C.F. Industries, Inc. v. Nichols*, 536 So. 2d 234, 238-39 (Fla. 1988), in which the Court affirmed the Commission's approval of standby rates to be charged cogenerators:

In setting rates, the PSC has a two-pronged responsibility: rates must not only be fair and reasonable to the parties before the PSC, they must also be fair and

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<sup>14</sup> Order No. PSC-92-1468-FOF-EU, issued December 17, 1992, in Docket No. 920949-EU, *In re: Joint Petition of Florida Power Corporation and Sebring Utilities Commission for Approval of Certain Matters in Connection with the Sale of Assets by Sebring Utilities Commission to Florida Power Corporation*, affirmed, *Action Group v. Deason*, 615 So. 2d 683 (Fla. 1993). (FPC/Sebring Order)

reasonable to other utility customers who are not directly involved in the proceedings at hand. Standby rates which did not properly recover the cost-of-service would unfairly discriminate against other customers by requiring them to subsidize the standby service.<sup>15</sup>

The Commission applied this standard in the FPC/Sebring case. The cost of the debt attached to the Sebring electric system was not recovered from the existing general body of FPC customers through an acquisition adjustment. Instead, the Commission stated that the debt that the Sebring electric system had accrued was a “cost of service” attached to that system, and that attaching that cost of service to a different existing general body of customers was against the principles of ratemaking. Apart from the recovery of the NBV and the going concern value, the Commission found all other recovery to be the responsibility of Sebring to be specifically recovered from the existing and future customers in the Sebring service area.

The record of this proceeding makes it perfectly clear, despite many Sebring customers’ wish that it be otherwise, that the cost of the Sebring debt is a cost to serve the Sebring customers. . . . We find that the Sebring rider rate appropriately identifies the additional cost to serve Sebring customers, appropriately allocates that cost to those customers, and appropriately insulates Florida Power Corporation’s general body of ratepayers from the costs that were not incurred for their benefit.<sup>16</sup>

The public interest is the ultimate measuring stick to guide the Commission’s decisions. *Gulf Coast Electric Cooperative v. Johnson*, 727 So. 2d 259, 264 (Fla. 1999). Utility ratemaking is viewed as a matter of fairness. *GTE Florida Inc. v. Clark*, 668 So. 2d 971, 972 (Fla. 1996).

### **FPL’s Request for a Positive Acquisition Adjustment**

In its petition filed on November 3, 2017, FPL requested approval to record and recover through base rates a positive acquisition adjustment of \$116.2 million and for approval to recover the costs associated with a short-term power purchase agreement (PPA) with OUC through the applicable cost recovery clause factors. The instant issue deals with FPL’s request for base rate recovery of the positive acquisition adjustment. FPL’s request for recovery of costs associated with the PPA with OUC is addressed in Issue 4.

FPL states that the acquisition of the COVB system will benefit the existing general body of FPL customers because FPL projects that the incremental costs to serve the COVB customers will be less than the incremental revenues received from those same customers. FPL also states that the addition of the COVB customers will reduce the shared amount of fixed cost spread across FPL’s existing general body of customers. FPL provided a cumulative present value revenue requirements (CPVRR) analysis that shows potential 30-year present value savings of \$105.3 million to the existing general body of FPL customers.<sup>17</sup>

<sup>15</sup> Order No. PSC-92-1468-FOF-EU, p. 8.

<sup>16</sup> Order No. PSC-92-1468-FOF-EU, p. 8.

<sup>17</sup> The CPVRR analysis includes the short-term PPA with OUC addressed in Issue 4. Following discovery by staff and OPC, FPL amended its 30-year CPVRR analysis to account for the tax savings from the Tax Cuts and Jobs Act,



FPL identifies three cases involving natural gas utilities where the Commission addressed positive acquisition adjustments. These cases involved the acquisition of Florida City Gas by AGL Resources, Inc. (AGLR), the acquisition of Florida Public Utilities Company (FPUC) by the Florida Division of Chesapeake Utilities Corporation (Chesapeake), and the acquisition of Indiantown Gas Company by FPUC.<sup>18</sup> FPL alleges that in these cases, the Commission identified five factors that have been considered in determining whether an acquisition and any resulting positive acquisition adjustment are in the public interest. FPL states that these five factors are: (1) increased quality of service; (2) lowered operating costs; (3) increased ability to attract capital for improvements; (4) a lower overall cost of capital; and (5) more professional and experienced managerial, financial, technical, and operational resources. FPL states that due to its size and expertise in the electric utility industry, all five of these factors will be met for the benefit of the COVB customers if the transaction is consummated.

FPL also cites the case of the acquisition of Sebring by FPC.<sup>19</sup> FPL states that the FPC/Sebring case is a good example of the Commission approving a positive acquisition adjustment.

### **Positive Acquisition Adjustment Analysis *Extraordinary Circumstances***

The Florida Commission, as well as almost every other state commission, practices original cost ratemaking. Under original cost ratemaking, the value of a utility's rate base is determined by the depreciated original cost of the property devoted to public service. An acquisition adjustment is the difference between the purchase price paid to acquire a utility asset or group of assets, and the depreciated original cost, or net book value (NBV), of those assets. A positive acquisition adjustment exists when the purchase price is greater than the NBV.

As noted earlier, the Commission's policy concerning consideration of acquisition adjustments for electric utilities has been that, for ratemaking purposes, absent a clear demonstration of extraordinary circumstances, the purchase of a utility system at a premium does not affect the determination of rate base. In other words, if the purchase price of a utility is greater than the NBV, the difference between the purchase price and NBV is not passed on to the general body of customers vis-a-vis an increase in rate base absent a demonstration of extraordinary circumstances. Such a policy protects customers from utilities "swapping assets" and inappropriately increasing costs to customers. For example, if a utility paid \$2 million for a \$1 million piece of equipment, the Commission would appropriately deny the unjustified \$1 million additional cost. Similarly, when one utility purchases another utility at above depreciated original

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which became law on December 22, 2017. The amended CPVRR projects 30-year present value savings of \$127.0 million.

<sup>18</sup> Order No. PSC-07-0913-PAA-GU, issued November 13, 2007, in Docket No. 060657-GU, *In re: Petition for approval of acquisition adjustment and recognition of regulatory asset to reflect purchase of Florida City Gas by AGL Resources, Inc.*; Order No. PSC-12-0010-PAA-GU, issued January 3, 2012, in Docket No. 110133-GU, *In re: Petition for approval of acquisition adjustment and recovery of regulatory assets, and request for consolidation of regulatory filings and records of Florida Public Utilities Company and Florida Division of Chesapeake Utilities Corporation.*; Order No. PSC-14-0015-PAA-GU, issued January 6, 2014, in Docket No. 120311-GU, *In re: Petition for approval of positive acquisition adjustment to reflect the acquisition of Indiantown Gas Company by Florida Public Utilities Company.*

<sup>19</sup> Order No. PSC-92-1468-FOF-EU.

cost, any cost above the depreciated original cost should be disallowed unless extraordinary circumstances indicate it would be in the best interests of customers to allow an acquisition adjustment. The premium paid above the depreciated original cost does not represent a contribution of capital to public service.

FPL cites to Rule 25-30.0371, F.A.C., in support of its request. Rule 25-30.0371, F.A.C., addresses acquisition adjustments for water and wastewater utilities. The rule states the Commission's policy that applies to all industries: A positive acquisition adjustment shall not be included in rate base absent proof of extraordinary circumstances. However, the circumstances that may be considered extraordinary circumstances for allowing a positive acquisition adjustment when a larger water or wastewater utility purchases a small, troubled utility do not apply to the facts of FPL's purchase of the COVB electric utility.

FPL also cites to five factors that have been considered in determining whether extraordinary circumstances exist for allowing a positive acquisition adjustment for a gas utility purchase: (1) increased quality of service; (2) lowered operating costs; (3) increased ability to attract capital for improvements; (4) a lower overall cost of capital; and (5) more professional and experienced managerial, financial, technical, and operational resources. The facts do not demonstrate any extraordinary circumstances related to COVB's electric utility concerning these factors that would support a positive acquisition adjustment.

The FPC/Sebring Order is the only similar case where the Commission approved a positive acquisition adjustment in the electric industry. This case provides guidance in addressing FPL's petition. The difficulty associated with addressing the question of whether a positive acquisition adjustment should be allowed in the electric industry and applied to the general body of customers was expressed in the Commission's decision in the FPC/Sebring case.

From our regulatory perspective the case has been a difficult one. As a general rule, we do not preapprove the prudence of rate base acquisitions outside of a rate case, nor do we usually permit acquisition adjustments, particularly outside of a rate case. ... To those who would view our decision here as precedent, we categorically state that this decision has no precedential value. It is limited to the unique set of facts in this case.<sup>20</sup>

However, there are differences between the facts surrounding FPL's request for a positive acquisition adjustment and the facts in the FPC/Sebring case. First and foremost, COVB is not on the verge of bankruptcy. In addition, the relative rate disparity in the FPL/COVB transaction is far less than the rate disparity present in the FPC/Sebring case. FPL's petition states that for a typical residential customer on a 1,000 kWh basis, FPL's rates were approximately \$16 per month less than COVB's rates. Due to a subsequent rate increase implemented by COVB and a rate decrease for FPL due to the removal of the Hurricane Matthew surcharge, the rate disparity is now approximately \$27 per month. In contrast, at the time of the FPC/Sebring transaction, the incremental difference for a typical residential customer on a 1,000 kWh basis between FPC's

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<sup>20</sup> Order No. PSC-92-1468-FOF-EU, p.11.

rates and Sebring's rates was approximately \$39 per month. Moreover, it was noted that in order for Sebring to produce sufficient revenues to meet its bond covenants on a stand-alone basis, the resulting rate differential would have doubled to \$80 per month.

It is important to note that a disparity in rates alone does not constitute an extraordinary circumstance that can support a positive acquisition adjustment. Electric utility customers cannot choose between electricity providers based on which provider has the lower rates. A significant price differential in electric rates between two electricity providers does not give a customer a substantial interest in the outcome of a proceeding on a proposed territorial agreement. *AmeriSteel Corp. v. Clark*, 691 So. 2d 473, 477 (Fla 1997). It is established law that "[a]n individual has no organic, economic or political right to service by a particular utility merely because he deems it advantageous to himself." *Story v. Mayo*, 217 So. 2d 304, 307 (Fla. 1968), *cert. denied*, 395 U.S. 909 (1969). In the Commission's exercise of jurisdiction over territorial agreements, larger policies are at stake than one customer's self-interest. *Lee County Electric Co-op v. Marks*, 501 So. 2d 585, 587 (Fla. 1987). If a customer is permitted to allege extraordinary circumstances simply because they pay higher rates than the rates charged by another electricity provider, then every person or entity in Florida would have grounds to argue they too are entitled to be served by a different electricity provider with lower rates.

Another difference between the facts in FPL's request for approval of a positive acquisition adjustment and what was approved in the FPC/Sebring case relates to how the premium paid over NBV was handled. FPL requests that the entire premium over the NBV of \$116.2 million (\$185.0 million purchase price less the NBV of \$68.8 million) be recovered through base rates from its general body of customers. As noted earlier, in the FPC/Sebring case, the net premium of approximately \$30.8 million (the purchase price of \$54.0 million less the NBV of \$17.5 million and the going concern value of \$5.7 million) was not included in the amount of the positive acquisition adjustment FPC was authorized to record on its books.

As described in the Case Background, approximately 60 percent of COVB's customers reside outside the City's municipal borders. For many years, these customers have been frustrated by their inability to have a voice in the operation of the City's electric utility or in rate setting decisions. These customers have wanted to be served by FPL because of its lower rates. This dissatisfaction has resulted in years of controversy, repeated efforts to address issues through legislation, multiple filings with the Commission, and litigation between the City of Vero Beach and the Town of Indian River Shores and Indian River County. Staff has received no objections in either Docket Nos. 20170235-EI or 20170236-EU from any COVB or FPL customers. The legal system favors settlement of utility territorial disputes by mutual agreement between contending parties. *AmeriSteel Corp. v. Clark*, 691 So. 2d 473, 478 (Fla. 1997). The sale of the COVB electric utility to FPL and attendant transfer of customers from COVB to FPL will resolve the ongoing contention between the COVB and Indian River County and the Town of Indian River Shores. For these reasons, staff believes that FPL has demonstrated extraordinary circumstances that justify the Commission approving a positive acquisition adjustment.

***Positive Acquisition Adjustment Amount  
Analysis of FPL's Requested Accounting Treatment***

While staff acknowledges there are extraordinary circumstances due to the unique nature of the territorial issues in this case that may merit the Commission granting approval of some amount of a positive acquisition adjustment, staff disagrees with the basis suggested by FPL for consideration of a positive acquisition adjustment. Staff believes that, consistent with the Commission's order in the FPC/Sebring case, the amount of the acquisition adjustment should be reasonably related to the ensuing benefit to the general body of FPL customers.

FPL's request for a positive acquisition adjustment associated with the acquisition of the COVB electric utility system can be distinguished from the acquisition adjustments addressed in the natural gas cases cited by FPL in several significant respects. In each of these cases, the positive acquisition adjustment is recorded on the books of the natural gas company that was acquired. This means that the recovery of the acquisition adjustment is borne solely by the customers that were acquired. For example, because the portion of the positive acquisition adjustment associated with the acquisition of Florida City Gas is recorded on the books of Florida City Gas rather than the books of AGLR, recovery of this cost is through the rates charged by Florida City Gas to its customers, not the rates charged by AGLR to its general body of customers. The same holds true for the other two acquisitions. Because FPL is proposing to integrate COVB customers into its customer base and to record the positive acquisition adjustment on its own books, the 4.9 million current FPL customers, and not the approximately 35,000 COVB customers, will be the customer base that will pay the vast majority of the acquisition adjustment. In addition, while a positive acquisition adjustment was recorded on the books of the FPUC Gas Division following the acquisition by Chesapeake, there was no positive acquisition adjustment requested or recorded on the books of the FPUC Electric Division, which was also acquired in the same transaction.

Another distinction between the acquisition adjustments approved for the natural gas transactions and the acquisition adjustment requested by FPL concerns the issue of future review. In each of these approvals, the orders specifically required that the permanence of the cost savings supporting the request for a positive acquisition adjustment would be subject to continuing review. If it were to be determined that the cost savings no longer exist, the acquisition adjustment may be partially or totally removed as deemed appropriate by the Commission. FPL's petition has specifically requested that once approved, there would be no further review of the positive acquisition adjustment. In other words, unlike these prior cases, under FPL's request there would be no requirement for FPL to demonstrate that the projected savings, supporting its requested positive acquisition adjustment, actually ever materialize.

As noted earlier, FPL claims that its CPVRR analysis demonstrates that there will be no harm to its existing customers if its proposed accounting treatment is approved as filed. However, there are certain assumptions in the CPVRR analysis that draw this conclusion into question. The first concern deals with the central assumption that FPL will receive an ever increasing revenue stream above the cost to serve the COVB customers. In year 2019, the analysis assumes it will cost \$1.1 million more to serve the COVB customers than FPL will receive in revenue from this group. However, in each of the successive years, this differential between the revenues received

and the cost to serve is assumed to reverse and grow such that by 2032, FPL is receiving \$22.1 million more in annual revenue than its cost to serve the COVB customers. Over the first 14 years, the analysis assumes FPL will receive \$209 million more in revenue directly from the COVB customers than its incremental cost to serve these same customers over this period. Under a cost of service regulatory paradigm, it is not reasonable to assume revenues will continuously increase while costs decline or remain relatively flat.

Another concern with the CPVRR analysis is the assumption regarding the incremental fixed costs and capital for generation needed to serve the COVB customers. The analysis assumes \$0 will be invested during the first 14 years. However, beginning in year 2033, the analysis assumes \$20.6 to \$31.0 million will be invested each and every year thereafter. In other words, the analysis assumes \$0 investment in incremental generation to serve the COVB customers over the first 14 years but \$434 million will be spent over the final 16 years. It is not reasonable to assume that all incremental generation costs will be incurred in the outer years. For example, FPL's Ten Year Site Plan identifies generation additions during the 2018 – 2027 planning period.

Because present value calculations assign the most weight to values in the early years and the least weight to values in the outer years, by assuming \$209 million of incremental revenues in excess of costs in the early years and the entire \$434 million of incremental generation costs in the outer years, the CPVRR analysis will produce a positive outcome compared to the result expected if the revenues and costs were spread more evenly across the time period in question. For example, if this one assumption regarding incremental fixed costs and capital for generation is reversed, meaning the annual projected amounts that total \$434 million are incurred during 2019 – 2034 instead of the last 16 years (2033 – 2048), the CPVRR result flips from a positive \$105 million to a negative \$22 million. Therefore, if the costs are assumed to have all occurred in either the later years or the early years, the CPVRR results become skewed.

Under FPL's requested accounting treatment, only the general body of FPL's existing customers are exposed to risk. If the requested accounting treatment is approved as filed, FPL will receive base rate recovery of the acquisition adjustment whether the assumed savings materialize or not. Specifically, FPL projects it will earn an equity return on the \$116.2 million acquisition adjustment of \$92.5 million on a nominal basis and \$50.3 million on a net present value basis. The approximately 35,000 customers of COVB will immediately receive a rate reduction of approximately \$27 per month: a rate reduction that would only be possible if another, unrelated group of customers would be responsible for paying off \$150 million in debt and contractual obligations on COVB's behalf. Under the request as filed, the benefits to FPL and the COVB customers will be known when the transaction closes. Finally, these benefits will inure to FPL and the customers of COVB whether the projected savings occur or not. In contrast, the purported benefits of the transaction to FPL's current customers are entirely dependent upon whether the projected savings assumed in the CPVRR analysis come to fruition. In addition, any benefit to the 4.9 million current FPL customers will not be known until years in the future, and that will only be if FPL is required to track the savings over time, something FPL has specifically requested not be part of the approval process.

### ***Going Concern Value***

In the FPC/Sebring case, the Commission approved a positive acquisition adjustment by determining a going concern value based on the Sebring electric system's value as a mature system with an established customer base.<sup>21</sup> Similarly, COVB is a mature system with an established customer base. Due to the unique circumstances in this case, it is reasonable to attach a going concern value to the COVB customer base.

The 1992 FPC/Sebring Order was used as a basis for evaluating and calculating the value of the acquired COVB customer base. In the FPC/Sebring Order, the Commission recognized a going concern value of \$4,491,000 for the value of Sebring's approximately 13,000 customers.<sup>22</sup> Based on those figures, staff calculated an average value of \$345 per customer for the Sebring customers. This was assumed as an appropriate estimation of the value of an acquired electric customer in 1992. In the current case, staff adjusted the \$345 average amount per customer to account for inflation from 1992 to 2018 using the Consumer Price Index for All Urban Customers.<sup>23</sup> Staff believes that accounting for inflation is appropriate and reasonable. The resulting calculation provides a 2018 average value of \$608 per acquired customer. The COVB electric utility system represents approximately 35,000 customers to which staff applied the \$608 average value per customer. This results in a total of approximately \$21.3 million for the value of COVB's customer base. In the absence of a more specific cost estimate, staff believes this is a reasonable proxy for estimating the value of a mature system with an established customer base of COVB's size.

Staff believes the remaining amount above the NBV and going concern value represents obligations inherent to the COVB system, including the debt and the contracted payment amounts to FMPA and OUC. Similar to the Sebring case, this debt and these contractual obligations represent the cost of serving the customers of the COVB electric utility system. In the FPC/Sebring case, the gross premium of approximately \$36.5 million was related to the debt obligation of Sebring. In the FPL/COVB transaction, the majority of the \$185.0 million purchase price is for the following: (1) to pay off \$20.4 million of debt of COVB; (2) to buy out \$108.0 million of contractual obligations with FMPA; and (3) to buy out \$20.0 million of contractual obligations with OUC. As with the case with Sebring, this debt and these contractual obligations were incurred solely for the benefit of the COVB customers and cannot be construed as providing any benefit to FPL's existing customers. It is not reasonable nor proper ratemaking policy to expect FPL's existing customers, who see no direct benefit from these contractual obligations, to be responsible for the fulfillment of these contracted amounts.

Staff notes that, while FPL and COVB have not proposed a surcharge in their PSA similar to the rider used in the Sebring case, the circumstances surrounding the PSA and similarities to the Sebring case lead staff to believe that such a rider or another similar mechanism could potentially be an appropriate mechanism for recovery of costs associated with serving the COVB

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<sup>21</sup> Order No. PSC-92-1468-FOF-EU, p. 9.

<sup>22</sup> The total going concern value of \$5.7 million recognized in the FPC/Sebring Order included the \$4.5 million amount associated with the customer base and approximately \$1.2 million for other considerations separate from the value of an established customer base.

<sup>23</sup> <https://data.bls.gov/pdq/SurveyOutputServlet>

customers.<sup>24</sup> Such a rider could be tailored by the parties to the PSA, as it was in the FPC/Sebring transaction, to provide COVB customers with immediate rate relief while allowing FPL recovery of the costs associated with serving the newly acquired customers. In addition, COVB customers would immediately receive the benefits from becoming FPL customers as well as resolution of the ongoing territorial dispute, and at the same time insulating FPL's 4.9 million existing customers from any costs not incurred for their benefit.

### **Conclusion**

The extraordinary circumstances demonstrated in this case support approval for FPL to record a positive acquisition adjustment in the amount of \$21.3 million on its books in Federal Energy Regulatory Commission (FERC) Account 114 - Electric Plant Acquisition Adjustments and to amortize this amount over the requested period of 30 years.

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<sup>24</sup> FPL could also request approval for rate relief in its next base rate case associated with the acquisition of the COVB system.

**Issue 4:** Should the Commission approve recovery of costs associated with the short-term power purchase agreement with OUC?

**Recommendation:** Consistent with staff's recommendation in Issue 3, staff recommends that the recovery of payments to OUC should be limited to actual annual savings and should be recovered through the Fuel and Purchased Power Cost Recovery Clause. (Graves, P. Buys)

**Staff Analysis:** FPL states that obtaining COVB's release from an existing wholesale contract with OUC, due to expire in 2023, is a necessary step to proceed with the acquisition of the City's utility. FPL additionally states that OUC would not grant COVB a release from the wholesale contract without additional compensation beyond the \$20 million that COVB committed to pay from the proceeds of the sale. As such, FPL negotiated a power purchase agreement (PPA) with OUC effective upon the closing of the PSA through December 2020. FPL asserts that the PPA will bring value to OUC and will unlock the savings that FPL's existing customers are projected to realize from consummating the overall acquisition.

Under the terms of the PPA, FPL is obligated to purchase a specified amount of capacity at a specified price from OUC. The purchase of energy is optional and is based on FPL anticipating an economic benefit of calling on the energy. Monthly energy costs are based on heat rate, duration of the purchase, and the daily price of natural gas. Energy costs also contain a defined operation and maintenance component. FPL states that the PPA would effectively be exercised as a peaking option to cover load during periods of high demand. However, FPL has made no assertion or demonstration that the PPA is needed for reliability purposes.

FPL requests that the payments associated with the PPA be recovered through the Fuel and Purchased Power Cost Recovery Clause (Fuel Clause). In this respect, FPL's requested method of recovery is like that of other power purchase agreements.

Staff believes that negotiated power purchase agreements should be considered prudent for cost recovery purposes if it is demonstrated that the agreement can reasonably be expected to be at a cost which does not exceed full avoided cost. Plainly stated, a power purchase agreement should not have a negative economic impact on a utility's customers.

FPL states that, from an avoided cost perspective, FPL customers will receive a total of approximately \$6.9 million in net energy savings, compared to total fixed costs of \$23.5 million. Therefore, based on FPL's estimates at this time, the PPA is approximately \$16.6 million above avoided cost. Table 4-1 summarizes the estimated costs and savings associated with the PPA over the estimated term of the agreement.



**Table 4-1**  
**Summary of Estimated Costs and Savings from OUC PPA**

	a	b	c=a-b
	Fixed Payments to OUC	Net Fuel Savings	Net Savings
2018	\$2,466,000	\$585,963	(\$1,880,037)
2019	\$9,899,100	\$3,250,640	(\$6,648,460)
2020	\$11,167,980	\$3,060,082	(\$8,107,898)
<b>Total</b>	<b>\$23,533,080</b>	<b>\$6,896,685</b>	<b>(\$16,636,395)</b>

Source: FPL response to Request No. 2 of Staff's Third Data Request

When considering FPL's economic analysis of the PPA, the agreement should not be considered prudent for full cost-recovery. Additionally, as previously discussed, FPL has negotiated the PPA as a means to effectuate its acquisition of COVB. Similar to staff's analysis in Issue 3, it is not reasonable nor proper to expect FPL's existing general body of customers, who see no direct benefit from the PPA, to be responsible for the fulfillment of the PPA. Based on the above, staff believes that costs above actual savings should not be recovered from FPL's existing customers. As discussed in staff's analysis for Issue 3, a rider paid by COVB customers or another similar mechanism may be appropriate to recover costs above actual savings.

### **Conclusion**

Consistent with staff's recommendation in Issue 3, staff recommends that the recovery of payments to OUC should be limited to actual annual savings and should be recovered through the Fuel Clause.

**Issue 5:** Should this docket be closed?

**Recommendation:** If no protest is filed by a person whose substantial interests are affected within 21 days of the issuance of the Order, this docket should be closed upon the issuance of a Consummating Order. (Cowdery)

**Staff Analysis:** If no protest is filed by a person whose substantial interests are affected within 21 days of the issuance of the Order, this docket should be closed upon the issuance of a Consummating Order.

# Item 6

State of Florida



## Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD  
TALLAHASSEE, FLORIDA 32399-0850

**-M-E-M-O-R-A-N-D-U-M-**

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**DATE:** May 23, 2018

**TO:** Office of Commission Clerk (Stauffer)

**FROM:** Division of Accounting and Finance (Richards, Buys, Cicchetti) *CRA* *JB*  
Office of the General Counsel (Harper) *ALM*  
*Nett S.M.C.*

**RE:** Docket No. 20180006-WS – Water and wastewater industry annual reestablishment of authorized range of return on common equity for water and wastewater utilities pursuant to Section 367.081(4)(f), F.S.

**AGENDA:** 06/05/18 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

**COMMISSIONERS ASSIGNED:** All Commissioners

**PREHEARING OFFICER:** Clark

**CRITICAL DATES:** None

**SPECIAL INSTRUCTIONS:** None

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### Case Background

Section 367.081(4)(f), Florida Statutes (F.S.), authorizes the Commission to establish, not less than once each year, a leverage formula to calculate a reasonable range of returns on equity (ROE) for water and wastewater (WAW) utilities. The leverage formula methodology currently in use was established in Order No. PSC-2001-2514-FOF-WS.<sup>1</sup> On October 23, 2008, the Commission held a formal hearing in Docket No. 20080006-WS to allow interested parties to provide testimony regarding the validity of the leverage formula.<sup>2</sup> Based on the record in that

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<sup>1</sup>Order No. PSC-2001-2514-FOF-WS, issued December 24, 2001, in Docket No. 20010006-WS, *In re: Water and wastewater industry annual reestablishment of authorized range of return on common equity of water and wastewater utilities pursuant to Section 367.081(4)(f), F.S.*

<sup>2</sup>At the May 20, 2008, Commission Conference, upon request of the Office of Public Counsel, the Commission voted to set the establishment of the appropriate leverage formula directly for hearing.

proceeding, the Commission approved the 2008 leverage formula in Order No. PSC-2008-0846-FOF-WS.<sup>3</sup> In that order, the Commission reaffirmed the methodology that was previously approved in Order No. PSC-2001-2514-FOF-WS.

The Commission approved the current leverage formula in 2011 by Order No. PSC-2011-0287-PAA-WS.<sup>4</sup> From 2012 through 2017, the Commission approved staff's recommendations to continue to use the 2011 leverage formula for establishing the authorized ROE for WAW utilities.<sup>5</sup> From 2012 through 2017, the Commission found that the range of returns on equity derived from the annual leverage formulas were not optimal for determining the appropriate authorized ROE for WAW utilities due to Federal Reserve monetary policies that resulted in historically low interest rates. Consequently, the Commission decided it was reasonable to continue using the range of returns on equity of 8.74 percent to 11.16 percent from the 2011 leverage formula docket.

On November 8, 2017, staff held a workshop to solicit input from interested persons regarding potential changes to the current leverage formula methodology. As part of the workshop, interested parties were requested to file comments by October 30, 2017. The only stakeholders that filed comments in the docket were the Office of Public Counsel (OPC) and Utilities, Inc. of Florida (UIF). OPC also filed post-workshop comments on January 31, 2018. A summation of the stakeholders' comments is discussed in Issue 1.

The Commission has jurisdiction pursuant to Section 367.081, F.S.

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<sup>3</sup>Order No. PSC-2008-0846-FOF-WS, issued December 31, 2008, in Docket No. 20080006-WS, *In re: Water and wastewater industry annual reestablishment of authorized range of return on common equity for water and wastewater utilities pursuant to Section 367.081(4)(f), F.S.*

<sup>4</sup>Order No. PSC-2011-0287-PAA-WS, issued July 5, 2011, in Docket No. 20110006-WS, *In re: Water and wastewater industry annual reestablishment of authorized range of return on common equity for water and wastewater utilities pursuant to Section 367.081(4)(f), F.S.*

<sup>5</sup>Order No. PSC-2017-0249-PAA-WS, issued June 26, 2018, in Docket No. 20170006-WS, *In re: Water and wastewater industry annual reestablishment of authorized range of return on common equity for water and wastewater utilities pursuant to Section 367.081(4)(f), F.S.*

## Discussion of Issues

**Issue 1:** Should the leverage formula methodology be modified?

**Recommendation:** Yes. Several refinements should be made to the leverage formula methodology to reflect newly available information and to reflect best practices. The leverage formula methodology should be modified to include a combined proxy group of natural gas and WAW utilities with updated financial data based on market-capitalization based weighted averages. Also, the cost of debt used in determining the leverage formula should be based on the projected cost of debt. (Richards)

**Staff Analysis:** Section 367.081(4)(f), F.S., authorizes the Commission to establish a leverage formula to calculate a reasonable range of returns on common equity for WAW utilities. The Commission must establish this leverage formula not less than once a year. For administrative efficiency, the leverage formula is used to determine the appropriate return for an average Florida WAW utility. However, use of the leverage formula by utilities is discretionary and a utility can file cost of equity testimony in lieu of using the leverage formula. As is the case with other regulated companies under the Commission's jurisdiction, the Commission has discretion in the determination of the appropriate ROE based on the evidentiary record in any proceeding. If one or more parties in a rate case or limited proceeding file testimony in lieu of the use of the leverage formula, the Commission will determine the appropriate ROE based on the evidentiary record in that proceeding.

Since 2001, staff has used the leverage formula methodology established in Order No. PSC-2001-2514-FOF-WS and reaffirmed in Order No. PSC-2008-0846-FOF-WS. This methodology used ROEs derived from financial models applied to an index of natural gas utilities. The Commission determined in 2001 and 2008 that there were an insufficient number of publicly traded WAW utilities that met the requisite criteria to assemble an appropriate proxy group, and therefore, natural gas utilities were used instead. However, due to mergers and acquisitions of natural gas utilities over the past two years, the number of acceptable natural gas utilities has been reduced from eight to six. Concurrently, the number of publicly-traded water companies followed by Value Line has risen from four to nine. Based on comments made at the workshop and its own analysis, staff has modified the selection of proxy companies and determined that a combination of qualified WAW and natural gas utilities is reasonable and appropriate for a proxy group to use in calculating the leverage formula. Staff selected natural gas utilities and WAW utilities that derive at least 50 percent of their revenue from regulated rates. These utilities have market power and are influenced significantly by economic regulation. As explained later in this recommendation, the returns calculated using the proxy group are adjusted to reflect the risks faced by Florida WAW utilities.

### Methodology

Staff's recommendation for the leverage formula reflects certain modifications from the previously approved methodology. As mentioned earlier, staff expanded the proxy group to include WAW utilities as well as natural gas utilities. The updated index consists of six natural gas companies and seven WAW companies that derive at least 50 percent of their total revenue from regulated operations. These companies have a median Standard and Poor's bond rating of "A".

In addition, staff used a weighted average, where appropriate, as opposed to using a simple average as was done in the previous leverage formula calculations. The weighted average was calculated using the market capitalization of the proxy companies. Staff used the market-capitalization based weighted average because of the size disparity among the companies comprising the new proxy group. There is a much greater size difference between companies in both assets and revenues when using both WAW and natural gas companies as opposed to using only natural gas companies. As pointed out in UIF's comments, "a market value weighted average is consistent with the manner in which returns for the Standard & Poor's 500 composite Index (S&P) are estimated."<sup>6</sup> Staff used a market capitalization weighted average of: (1) Discounted Cash Flow (DCF) model results, (2) the Beta values in the Capital Asset Pricing Model (CAPM), and (3) the equity ratio of the proxy group.

In addition to the modifications to the leverage formula methodology cited above, staff used a projected yield on Baa3 rated public utility bonds to estimate the bond yield of an average Florida WAW utility in the calculation of the weighted average cost of capital of the proxy group. Staff believes using a projected yield is appropriate because required returns are forward looking and based on projections. The previously approved methodology used the most current monthly average bond yield for a Baa2 rated utility and added the 120-month average spread between a Baa3 rated utility bond yield and the Baa2 rated bond yield as published by Value Line Investment Survey (Value Line). Staff updated its methodology to use the projected Baa2 rated utility bond yield for the upcoming four quarters as published by the most recent Blue Chip Financial Forecasts (Blue Chip). Staff then added the 120-month average spread to the projected Baa2 rated utility bond yield to estimate a projected Baa3 rated utility bond yield. Aside from the modifications cited above, all other aspects of the previously approved leverage formula methodology remain unchanged.

The leverage formula relies on ROE models described below. Staff adjusted the results of these models to reflect differences in risk and debt cost between the proxy group and the average Florida WAW utility. The ROE models include a four percent adjustment for flotation costs. The ROE models are as follows:

- A multistage Discounted Cash Flow (DCF) model applied to an index of natural gas and WAW utilities that have publicly traded stock and are followed by the Value Line. This DCF model is an annually compounded model and uses prospective dividend growth rates.
- A Capital Asset Pricing Model (CAPM) that relies on a market return for companies followed by Value Line, the average projected yield on the U.S. Treasury's 30-year bonds published by Blue Chip Financial Forecasts, and the weighted average beta for the index of natural gas and WAW utilities. The market return for the 2018 leverage formula was calculated using a quarterly DCF model with stock prices as of April 16, 2018.

Staff averaged the results of the DCF and CAPM models and adjusted the result as follows:

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<sup>6</sup>Comments on Florida leverage formula to establish the annual authorized range of returns for water & wastewater utilities of Pauline M. Ahern, CRRA, on behalf of Utilities, Inc. of Florida, P. 20.



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- A bond yield differential of 64 basis points was added to reflect the difference in yields between an A/A2 rated bond, which is the median bond rating for the combined utility index, and a BBB-/Baa3 rated bond. Florida WAW utilities are assumed to be comparable to companies with the lowest investment grade bond rating, which is Baa3. This adjustment compensates for the difference between the credit quality of 'A' rated debt and the credit quality of the minimum investment grade rating.
- A private placement premium of 50 basis points is added to reflect the difference in yields on publicly traded debt and privately placed debt, which is illiquid. Investors require a premium for the lack of liquidity of privately placed debt.
- A small-utility risk premium of 50 basis points is added because the average Florida WAW utility is too small to qualify for privately placed debt and smaller companies are considered by investors to be more risky than larger companies.

After the above adjustments, the resulting cost of equity estimate is included in the weighted average capital structure of the proxy group of utilities to derive the leverage formula.

### **Workshop Comments**

On November 8, 2017, staff held a workshop to solicit input from interested persons regarding potential changes to the current leverage formula methodology. As part of the workshop, interested persons were requested to file comments by October 30, 2017. The only stakeholders that filed comments in the docket were the Office of Public Counsel (OPC) and Utilities, Inc. of Florida (UIF). OPC also filed post-workshop comments on January 31, 2018. OPC's suggestions all resulted in lowering the ROE while UIF's suggestions mostly resulted in increasing the ROE.

#### ***OPC Comments***

- OPC submitted that the Commission adopt a rule setting forth the leverage formula. OPC contended that continued application of the leverage formula constitutes an un-adopted rule.
- OPC questioned the applicability of a Bond Yield Differential if an all WAW utility proxy group is used. OPC specifically questioned whether the assumed bond rating of Baa3 for the average WAW utility in Florida is still a valid assumption.
- OPC stated that the leverage formula should differentiate between Class A WAW utilities and Class B and C WAW utilities. OPC opined that Class A WAW utilities would not need a small-utility risk premium.
- OPC further commented that the small-utility risk premium adjustment is duplicative of the bond yield risk premium and ignores the fact that several Florida WAW utilities could be comparable to water utilities included in the new index and therefore the small-utility risk premium should be removed from the formula.
- OPC also submitted that the private placement premium of 50 basis points should be removed from the leverage formula for Class A WAW utilities. OPC does not believe



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that investors require a premium for the lack of liquidity of privately placed debt for large Florida WAW utilities that are owned by substantially larger corporations. OPC further questioned why the private placement premium of 50 basis points is fixed and if it is reasonable.

- Finally, OPC submitted that flotation costs should not be included in the DCF and CAPM models since none of Florida's WAW utilities are publicly traded and do not incur costs related to issuing new shares of stock.

### ***Staff Response to OPC's Comments***

Regarding OPC's request for the Commission to adopt a leverage formula rule, Section 367.081(4)(f), F.S., states:

The Commission may regularly, not less often than once each year, ***establish by order*** a leverage formula or formulae that reasonably reflect the range of returns on common equity for an average water or wastewater utility and which, for purposes of this section, shall be used to calculate the last authorized rate of return on equity for any utility which otherwise would have no established rate of return on equity. In any other proceeding in which an authorized rate of return on equity is to be established, a utility, in lieu of presenting evidence on its rate of return on common equity, may move the commission to adopt the range of rates of return on common equity that has been established under this paragraph. (Emphasis added)

Staff believes the statute, on its face, makes it clear that the Commission may establish a leverage formula by order. The Commission reviews the leverage formula yearly. Thus, if it was codified in a rule, the Commission would have to initiate rulemaking every year to review the leverage formula. Based on the statutory language allowing the leverage formula to be established by Commission order, it appears that the legislature did not intend the Commission to be in a constant rule making posture for this matter. Establishing a rule for the leverage formula may limit the Commission's discretion in an area where maximum discretion is advised. Maximum discretion is advised because determination of the required return on equity is subjective and a matter of opinion arrived at by informed judgement. Consequently, staff does not recommend establishment of a rule for the leverage formula.

Regarding the bond yield differential, staff believes it is a necessary adjustment that recognizes the spread between the median bond rating of the utility proxy group (usually an A rating) to the assumed average Florida WAW utility's bond rating which is the lowest investment grade bond rating (Baa3). If the Florida WAW utilities under the Commission's jurisdiction were to be rated, staff believes that, on average, they would be well below investment grade.

Regarding OPC's contention that the leverage formula should differentiate between large Class A WAW utilities and smaller Class B and C WAW utilities, staff disagrees. The leverage formula is derived to appropriately compensate the average WAW utility in Florida. The largest WAW utility in Florida is substantially smaller and more risky from a financial perspective than

the utilities in the proxy group. UIF is by far the largest WAW utility in Florida and has total common equity of \$47 million. The average market capitalization of the utilities in staff's recommended proxy group is \$5.45 billion and the smallest company has a market capitalization of \$400 million. Small-company risk premiums are a widely accepted adjustment that has been used by financial analysts for decades to account for the differences in the expected returns between small-cap and large-cap companies. If any adjustment should be made to account for the difference between the Class A and Class B and C WAW utilities, an upward adjustment should be made for Class B and C WAW utilities.

Reasons why smaller WAW utilities are more risky than other utilities include: (1) WAW utilities are more capital intensive than electric or natural gas utilities; (2) WAW utilities experience lower relative depreciation rates than other utilities, thereby providing less cash flow; (3) WAW utilities experience consistently negative free cash flow, thereby increasing their financing requirements; (4) WAW utilities' credit metrics are inferior to those of electric and natural gas utilities; (5) Florida WAW utilities are substantially smaller than electric and natural gas utilities by virtually any measure including total revenues, total assets, and market capitalization; (6) WAW utilities' earnings are much more volatile (uncertain) than electric and natural gas utilities' earnings; and (7) WAW utilities experience many more business failures than electric and natural gas utilities.

Regarding OPC's claim that the risk premium adjustment is duplicative, staff disagrees. The small-utility risk premium adjustment and the bond yield risk premium adjustment are not the same and compensate an investor for different risks. The small-utility risk premium is an adjustment for the smaller sized companies based on market capitalization and the bond yield risk premium is an adjustment based on the assumed credit rating of the average Florida WAW utility (Baa3) as compared to the median credit rating of the proxy group (A).

Regarding OPC's comment about the private placement premium, the Commission has previously included this adjustment to reflect the difference in yields on publicly traded debt and privately placed debt, which is illiquid. Staff admits that a private placement premium may change over time based on financial market conditions. However, information regarding actual private placement premiums is not readily available to derive an actual amount. Nevertheless, staff believes recognition of the private placement risk should be included in the leverage formula. The private placement premium of 50 basis points was approved by the Commission in Order No. PSC-2008-0846-FOF-WS.<sup>7</sup> In its order, the Commission stated:

In addition, we find that the average WAW utility in Florida does not have access to public financing. The fact that an average WAW utility in Florida cannot access public financing justifies the inclusion of a private placement premium adjustment to compensate for the lack of liquidity and the higher cost of financing of privately placed debt. For these reasons, we find that that it is appropriate to continue to make a private placement

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<sup>7</sup>Order No. PSC-2008-0846-FOF-WS, issued December 31, 2008, in Docket No. 20080006-WS, *In re: Water and wastewater industry annual reestablishment of authorized range of return on common equity for water and wastewater utilities pursuant to Section 367.081(4)(f), F.S.*

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premium adjustment of 50 basis points as reflected in Attachment A to this Order.

Staff believes the average WAW utility in Florida continues to not have access to public financing and will have to pay a higher interest rate for privately placed debt and a private placement premium is still appropriate.

Regarding flotation costs, staff disagrees with OPC and believes that accounting for flotation costs in the application of the models is appropriate and in accordance with financial theory and application of the financial models. Although none of Florida's WAW utilities are publically traded, application of the DCF and CAPM models to a proxy group is used to approximate the required return on equity and appropriate estimation of the required ROE includes an adjustment for flotation costs.

### ***UIF Comments***

UIF retained ScottMaden, Inc., management consultants, to file comments of its behalf. Ms. Pauline M. Ahern, CRRA, who testified on behalf of UIF in the 2008 leverage formula docket, submitted comments. In summary, Ms. Ahern provided 47 pages of technically detailed suggestions to change the DCF and CAPM methodologies used to derive the ROE of the proxy group. Those suggestions are summarized below.

- The Commission should consider including a WAW utility index along with or replacing the natural gas utility index in the leverage formula.
- The Commission should consider changing the DCF model to utilize the single-stage DCF model and use expected growth rate projections of EPS (earnings per share) as published in Value Line in place of using projected dividends.
- The Commission should eliminate foreign companies in the CAPM Market Equity Risk Premium (MERP) because the WAW utilities are based in the U.S.
- The CAPM MERP should be based on a market-value weighted average instead of a simple average.
- The Commission should add two additional MERP estimates to the CAPM and average the results. The first one using a linear Ordinary Least Squares regression, and the second using an Empirical CAPM.
- The private placement premium should remain at 50 basis points.
- The small-utility risk premium should be increased from 50 basis points to 100 basis points.
- Flotation costs of 20 basis points, or 4%, should be included.
- The Commission should use a projected yield on Baa3/BBB- rated public utilities in the derivation to adjust the cost of equity at a 40% equity ratio.

### ***Staff Response to UIF's Comments***

Several of UIF's suggestions are already included in the current leverage formula methodology as a result of the outcome of the 2008 hearing and subsequent order. In this docket, staff included WAW utilities along with the natural gas utilities in its proxy group as suggested by UIF to increase the sample group of companies available. The private placement premium and small-utility risk premium are also included in the current methodology. Staff does not believe that the small-utility risk premium should be increased without further study to determine if that would be appropriate. Staff agrees that flotation costs should be recognized in the application of the ROE models and they have been since 2001.

UIF suggested that an estimated projected yield on Baa3 rated public utility bonds be used to calculate the assumed bond yield for the average Florida WAW utility. The required return on equity is a forward-looking concept and is based on projections. Also, the costs included in the test year should reflect the costs expected during the period rates are going to be in effect. Consequently, staff believes it is reasonable to use a projected Baa3 rated utility bond yield and that it is consistent with staff's practice of relying on the projected risk-free rate used in the CAPM.

Regarding UIF's suggestion to use a single-stage DCF model using expected earnings growth in the model, staff disagrees. All DCF models are derived from the equation that represents all expected cash flows into perpetuity. The multi-stage model allows staff to avail itself of the explicit expected dividends provided by Value Line. Using a less robust form of the DCF model provides no benefit. Staff also disagrees with the use of expected earnings growth in lieu of expected dividend growth. DCF theory is unambiguous when explaining that the expected cash flows associated with a share of stock are dividends. This is important because the time value of money underscores DCF theory and all earnings are not paid out to investors when they are earned. Expected earnings are crucial to determining expected dividends, but expected dividends are the expected cash flows that determine the value of a stock.

Regarding UIF's recommendation that foreign stocks be removed from the determination of the expected market return in the CAPM model, staff disagrees. Under CAPM theory, the expected market return is the return on all asset classes worldwide. Most analysts use the expected return on the US stock market as a proxy for the return on all asset classes out of convenience. Consequently, there is no reason to exclude foreign companies trading on the US market.

Regarding UIF's recommendations to consider adding more versions of the CAPM to the leverage formula analysis, staff believes the additional methodologies require a much greater level of subjectivity than the traditional CAPM but will continue to consider their inclusion in the leverage formula analysis.

### **Conclusion**

For the reasons discussed above, staff recommends several refinements to the leverage formula methodology to reflect newly available information and to reflect best practices. The leverage formula methodology should be modified to include a combined proxy group of natural gas and WAW utilities with updated financial data based on market-capitalization based weighted averages. Also, the cost of debt used in determining the leverage formula should be based on the projected cost of debt.

**Issue 2:** What is the appropriate range of returns on common equity for water and wastewater utilities pursuant to Section 367.081(4)(f), Florida Statutes?

**Recommendation:** The leverage formula methodology described in Issue 1 should be applied using a proxy group comprised of natural gas and WAW utilities and updated financial data. Accordingly, the following leverage formula should be used until the leverage formula is addressed again in 2019:

$$\text{ROE} = 6.24\% + (1.94 \div \text{Equity Ratio})$$

Where the Equity Ratio = Common Equity  $\div$  (Common Equity + Preferred Equity + Long-Term and Short-Term Debt)

Range: 8.18% at 100% equity to 11.08% at 40% equity

Additionally, the Commission should cap returns on common equity at 11.08 percent for all WAW utilities with equity ratios less than 40 percent. This is in an effort to discourage imprudent financial risk. This cap is consistent with the methodology in Order No. PSC-2008-0846-FOF-WS. (Richards)

**Staff Analysis:** Section 367.081(4)(f), F.S., authorizes the Commission to establish a leverage formula to calculate a reasonable range of returns on common equity for WAW utilities. The Commission must establish this leverage formula not less than once a year. For administrative efficiency, the leverage formula is used to determine the appropriate return for an average Florida WAW utility. However, use of the leverage formula by utilities is discretionary and a utility can file cost of equity testimony in lieu of using the leverage formula. As is the case with other regulated companies under the Commission's jurisdiction, the Commission has discretion in the determination of the appropriate ROE based on the evidentiary record in any proceeding. If one or more parties in a rate case or limited proceeding file testimony in lieu of using of the leverage formula, the Commission will determine the appropriate ROE based on the evidentiary record in that proceeding.

### Updated Leverage Formula

Staff notes that the leverage formula depends on four basic assumptions:

- 1) Business risk is similar for all WAW utilities;
- 2) The cost of equity is an exponential function of the equity ratio but a linear function of the debt to equity ratio over the relevant range;
- 3) The marginal weighted average cost of investor capital is constant over the equity ratio range of 40 percent to 100 percent; and
- 4) The debt cost rate at an assumed Moody's Baa3 bond rating, plus a 50 basis point private placement premium and a 50 basis point small-utility risk premium, represents the average marginal cost of debt to an average Florida WAW utility over an equity ratio range of 40 percent to 100 percent.

Date: May 23, 2018

For these reasons, the leverage formula is assumed to be appropriate for the average Florida WAW utility.

In the instant docket, staff updated the current leverage formula using the most recent 2018 financial data and the methodology described in Issue 1 which uses a proxy group including both natural gas and WAW utilities and market-capitalization based weighted average results. The derivation of the leverage formula is presented in Attachment 1.

Using the updated financial data in the revised leverage formula decreases the lower end of the current allowed ROE range by 56 basis points and decreases the upper end of the range by 8 basis points. Overall, the spread between the range of returns on equity based on the updated leverage formula is 290 basis points (8.18 percent to 11.08 percent). In comparison, the range of returns on equity for the existing leverage formula from 2011 is 242 basis points (8.74 percent to 11.16 percent).

The projected assumed Baa3 bond rate of 6.24 percent used in the updated leverage formula calculation includes a 50 basis point adjustment for small-company risk and a 50 basis point adjustment for a private placement premium and remains low relative to historic levels. In comparison, the assumed Baa3 bond rate used in the existing leverage formula is 7.13 percent. The lower Baa3 bond rate of 6.24 percent is the cause of the decrease at the lower end of the range and the increased spread.

Based on the aforementioned, staff believes the revised leverage formula methodology applied to a proxy group of natural gas and WAW utilities with updated financial data based on market-capitalization weighted averages produces a reasonable range of ROEs for WAW utilities and reflects current financial markets. As such, staff recommends the following leverage formula be used until a new leverage formula is determined in 2019:

$$\text{ROE} = 6.24\% + (1.94 \div \text{Equity Ratio})$$

Where the Equity Ratio = Common Equity ÷ (Common Equity + Preferred Equity + Long-Term and Short-Term Debt).

The appropriate range of returns on equity is 8.18% at 100% equity to 11.08% at 40% equity.

Additionally, staff recommends that the Commission cap returns on common equity at 11.08 percent for all WAW utilities with equity ratios less than 40 percent. Staff recommends this in an effort to discourage imprudent financial risk. This cap is consistent with the methodology in Order No. PSC-2008-0846-FOF-WS.



**Issue 3:** Should this docket be closed?

**Recommendation:** No. Upon expiration of the protest period, if a timely protest is not received from a substantially affected person, the decision should become final and effective upon the issuance of a Consummating Order. However, this docket should remain open to allow staff to monitor changes in capital market conditions and to readdress the reasonableness of the leverage formula as conditions warrant. (Harper)

**Staff Analysis:** Upon expiration of the protest period, if a timely protest is not received from a substantially affected person, the decision should become final and effective upon the issuance of a Consummating Order. However, this docket should remain open to allow staff to monitor changes in capital market conditions and to readdress the reasonableness of the leverage formula as conditions warrant.

SUMMARY OF RESULTS  
2018 Water and Wastewater Leverage Formula

	<u>Updated Results</u>	<u>Currently In Effect</u>
(A) DCF ROE	7.69%	8.25%
(B) CAPM ROE	<u>9.49%</u>	<u>9.40%</u>
AVERAGE	8.59%	8.83%
Bond Yield Differential	0.64%	0.57%
Private Placement Premium	0.50%	0.50%
Small-Utility Risk Premium	0.50%	0.50%
Adjustment to Reflect Required Equity		
Return at a 40% Equity Ratio	<u>0.85%</u>	<u>0.76%</u>
Cost of Equity for Average Florida		
WAW Utility at 40% Equity Ratio	<u>11.08%</u>	<u>11.16%</u>

2017 Leverage Formula (Currently in Effect)

Return on Common Equity =  $7.13\% + (1.61 \div \text{Equity Ratio})$

Range of Returns on Equity = 8.74% to 11.16%

2018 Leverage Formula

Return on Common Equity =  $6.24\% + (1.94 \div \text{Equity Ratio})$

Range of Returns on Equity = 8.18% to 11.08%



Marginal Cost of Investor Capital  
Average Water and Wastewater Utility

<u>Capital Component</u>	<u>Ratio</u>	<u>Marginal Cost Rate</u>	<u>Weighted Marginal Cost Rate</u>
Common Equity	48.48%	10.24%	4.96%
Total Debt	<u>51.52%</u>	6.24% *	<u>3.21%</u>
	<u>100.00%</u>		<u>8.18%</u>

A 40% equity ratio is the floor for calculating the required return on common equity.

The return on equity at a 40% equity ratio:  $6.24\% + (1.94 \div 0.40) = 11.08\%$

Marginal Cost of Investor Capital  
Average Water and Wastewater Utility at 40% Equity Ratio

<u>Capital Component</u>	<u>Ratio</u>	<u>Marginal Cost Rate</u>	<u>Weighted Marginal Cost Rate</u>
Common Equity	40.00%	11.08%	4.43%
Total Debt	<u>60.00%</u>	6.24% *	<u>3.74%</u>
	<u>100.00%</u>		<u>8.18%</u>

Where:  $\text{Equity Ratio} = \text{CE} / (\text{CE} + \text{Pref. Equity} + \text{LTD} + \text{STD})$

\*Assumed Baa3 rate for April 2018 plus a 50 basis point private placement premium and  
A 50 basis point small utility risk premium.

Sources:

Value Line Selection and Opinion  
Companies' 10-K Filings

Discounted Cash Flows Results

<u>Company</u>	<u>Weight<sup>[1]</sup></u>	<u>Div<sub>0</sub></u>	<u>Div<sub>1</sub></u>	<u>Div<sub>2</sub></u>	<u>Div<sub>3</sub></u>	<u>Div<sub>4</sub></u>	<u>EPS<sub>4</sub></u>	<u>ROE<sub>4</sub></u>	<u>GR<sub>1-4</sub></u>	<u>GR<sub>4+</sub></u>	<u>AVG-PR<sup>[2]</sup></u>	<u>Weighted DCF Results<sup>[3]</sup></u>
Atmos Energy	12.83%	1.94	2.08	2.21	2.35	2.50	5.15	0.11	1.06	1.06	81.78	1.05%
Northwest Natural Gas Company	2.26%	1.89	2.00	2.06	2.13	2.20	3.50	0.11	1.03	1.04	57.17	0.17%
ONE Gas, Inc.	4.94%	1.84	2.00	2.15	2.32	2.50	4.00	0.09	1.08	1.03	65.22	0.33%
Public Service Enterprise Group	33.85%	1.80	1.90	2.00	2.10	2.20	3.50	0.11	1.05	1.04	48.64	2.65%
Southwest Gas Holdings	4.51%	2.08	2.18	2.31	2.45	2.60	5.10	0.09	1.06	1.04	68.10	0.34%
Spire Inc.	4.51%	2.25	2.40	2.43	2.47	2.50	5.50	0.10	1.01	1.05	69.14	0.37%
American States Water	2.68%	1.07	1.15	1.24	1.34	1.45	2.45	0.14	1.08	1.06	52.42	0.21%
American Water Works	20.45%	1.78	1.95	2.15	2.36	2.60	4.50	0.11	1.10	1.04	80.35	1.47%
Aqua America	8.46%	0.85	0.91	1.01	1.12	1.25	1.95	0.13	1.11	1.04	32.91	0.65%
California Water Service Group	2.54%	0.75	0.78	0.85	0.93	1.02	1.90	0.12	1.09	1.05	36.43	0.19%
Middlesex Water	0.85%	0.91	0.96	1.01	1.06	1.11	2.10	0.13	1.05	1.06	38.37	0.07%
SJW Group	1.55%	1.12	1.20	1.28	1.36	1.45	3.45	0.14	1.07	1.08	56.04	0.16%
York Water	0.56%	0.70	0.75	0.83	0.91	1.00	1.60	0.14	1.10	1.05	30.24	0.04%
<b>Annual Weighted DCF Results:</b>												<b><u>7.69%</u></b>

The ROE of 7.69 percent represents the expected cost of equity required to match the average stock price with present value of expected cash flows.

Sources:

Stock prices obtained from Yahoo Finance for the 30-day period April 1, 2018 through April 30, 2018  
Natural Gas company dividends, earnings, and ROE obtained from Value Line Reports issued March 2, 2018  
Water and Wastewater company dividends, earnings and ROE obtained from Value Line Reports issued April 13, 2018

Notes:

<sup>[1]</sup> Company's weight is based off of the Company's Market-Capitalization

<sup>[2]</sup> Average Stock Prices include four percent flotation cost

<sup>[3]</sup> Company's DCF results are weighed against their Market Capitalization Weight

Capital Asset Pricing Model Cost of Equity for  
Water and Wastewater Industry

CAPM analysis formula

K = RF + Beta ( MR – RF) + Flotation Cost

K = Investor's required rate of return

Beta = Measure of industry-specific risk (average for natural gas and water utilities followed by Value Line)

MR = Market Return (Value Line Investment Analyzer Web Browser)

RF = Risk-free rate (Blue Chip forecast for Long-Term Treasury Bond)

9.49% = 3.58% + 0.69 (11.83% - 3.58%) + 0.20%

Note:

Staff calculated the market return using a quarterly DCF model for a large number of dividend paying stocks followed by Value Line. As of April 16, 2018, the result was 11.83 percent.

Staff added 20 basis points to the CAPM result to account for a flotation cost of four percent.

Public Utility Long-Term Bond Yield Averages

Month, Year	A2	Spread	A3	Spread	Baa1	Spread	Baa2	Spread	Baa3
April, 2018	4.15	0.11	4.26	0.11	4.37	0.11	4.48	0.11	4.59
<b>120 – Month Average Spread</b>							4.480	<b>0.161</b>	0.0464

Consensus Forecasts – Corporate Baa Bond Rate

2Q 2018	3Q 2018	4Q 2018	1Q 2019
4.8	5.0	5.2	5.3
<b>Average Forecasted Corporate Baa Bond Rate:</b>			<b>5.075</b>

**Assumed Bond Yield for Baa3 Utilities:  $0.161 + 5.075 = 5.236$**

	Updated Results	Currently In Effect
Private Placement Premium	0.50%	0.50%
Small-Utility Risk Premium	0.50%	0.50%
Assumed Bond Yield for Baa3 Utilities	5.24%	6.13%
<b>Assumed Bond Yield for Florida WAW Utilities:</b>	<b><u>6.24%</u></b>	<b><u>7.13%</u></b>

## Sources:

Value Line Selection and Opinion

Blue Chip Financial Forecast – May 2018

2018 Leverage Formula Proxy Group

<u>Company</u>	<u>S&amp;P Bond Rating</u>	<u>Percent Regulated Revenue</u>	<u>V/L Market Capital (Millions)</u>	<u>Equity Ratio</u>	<u>Weighted Equity Ratio</u>	<u>Value Line Beta</u>	<u>Weighted Value Line Beta</u>
Atmos Energy	A	95.99%	\$9,100	52.59%	6.75%	0.70	0.09
NW Natural Gas	A+	96.16%	\$1,600	47.10%	1.06%	0.65	0.01
One Gas, Inc.	A	100.00%	\$3,500	55.71%	2.75%	0.70	0.03
P.S. Enterprise	BBB+	68.63%	\$24,000	50.43%	17.07%	0.70	0.24
SW Gas	BBB+	51.09%	\$3,200	47.07%	2.12%	0.75	0.03
Spire, Inc.	A-	95.36%	\$3,200	43.63%	1.97%	0.65	0.03
American States Water	A+	77.24%	\$1,900	58.22%	1.56%	0.75	0.02
American Water Works	A	88.11%	\$14,500	41.08%	8.40%	0.65	0.13
Aqua America	A+	99.43%	\$6,000	47.70%	4.04%	0.70	0.06
Cal. Water Service	A+	93.93%	\$1,800	46.22%	1.17%	0.75	0.02
Middlesex Water	A	88.28%	\$600	56.86%	0.48%	0.80	0.01
SJW Group	A	96.63%	\$1,100	50.39%	0.78%	0.70	0.01
York Water	A-	100.00%	\$400	56.71%	0.32%	0.80	0.00
<b>AVERAGE</b>	<b>A</b>	<b>88.53%</b>	<b>\$5,454</b>	<b>50.28%</b>	<b>48.48%</b>	<b>0.72</b>	<b>0.69</b>

Sources:

Value Line Ratings and Reports

S.E.C. Form 10K for Companies

Standard and Poor's

# Item 7

State of Florida



## Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD  
TALLAHASSEE, FLORIDA 32399-0850

**-M-E-M-O-R-A-N-D-U-M-**

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**DATE:** May 23, 2018

**TO:** Office of Commission Clerk (Stauffer)

**FROM:** Division of Accounting and Finance (Barrett, Galloway) *MCB*  
Division of Economics (Draper, Guffey) *ED*  
Office of the General Counsel (Brownless) *ALM*  
*JSC* *Am*

**RE:** Docket No. 20180001-EI – Fuel and purchased power cost recovery clause with generating performance incentive factor.

**AGENDA:** 06/05/18 – Regular Agenda – Interested Persons May Participate

**COMMISSIONERS ASSIGNED:** All Commissioners

**PREHEARING OFFICER:** Clark

**CRITICAL DATES:** None

**SPECIAL INSTRUCTIONS:** Please take up this item and the recommendation for Docket No. 20180007-EI consecutively.

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### Case Background

On April 16, 2018, Florida Power & Light Company (FPL) filed a Petition for Mid-Course Corrections to its 2018 Capacity and Environmental Cost Recovery Factors that reflect the impact of the Tax Cuts and Jobs Act of 2017 (FPL Mid-Course Petition). The FPL Mid-Course Petition seeks to reduce the respective 2018 capacity cost recovery factors that were approved in Order No. PSC-2018-0105-PCO-EI,<sup>1</sup> and the environmental cost recovery factors that were

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<sup>1</sup>By Order No. PSC-2018-0105-PCO-EI, issued February 26, 2018, in Docket No. 20180001-EI (First Mid-Course Order), *In re: Fuel and Purchased Power Cost Recovery Clause with Generating Performance Incentive Factor*, the Commission approved a prior mid-course correction from FPL. The instant pleading is the second petition for a mid-course correction FPL has filed in this docket in 2018.

approved in Order No. PSC-2018-0100-FOF-EI.<sup>2</sup> Staff notes that the capacity cost recovery portion of FPL's Mid-Course Petition will be addressed in Docket No. 20180001-EI, and environmental cost recovery clause reduction will be addressed in Docket No. 20180007-EI.

Mid-course corrections are part of the fuel and purchased power cost recovery clause (fuel clause) proceeding, and such corrections are used by the Commission between fuel clause hearings whenever costs deviate from revenues by a significant margin. Petitions for mid-course corrections to fuel factors are addressed in Rule 25-6.0424, Florida Administrative Code (F.A.C.). Under this rule, a utility must notify the Commission whenever it expects to experience an under-recovery or over-recovery greater than 10 percent. Pursuant to Rule 25-6.0424, F.A.C., the mid-course percentage is the estimated end-of-period total net true-up amount divided by the current period's total actual and estimated jurisdictional fuel revenue applicable to period amount.

Mid-course corrections are considered preliminary procedural decisions, and any over-recoveries or under-recoveries caused by or resulting from the Commission-approved adjusted fuel or capacity factors may be included in the following year's fuel or capacity factors.

The Commission's jurisdiction to consider fuel clause proceedings derives from the Commission's authority to set fair and reasonable rates, found in Section 366.05, Florida Statutes.

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<sup>2</sup>Order No. PSC-2018-0100-FOF-EI, issued February 22, 2018, in Docket No. 20180007-EI, *In re: Environmental Cost Recovery Clause*.



## Discussion of Issues

**Issue 1:** Should the Commission approve FPL's Mid-Course Petition to correct its capacity cost recover factors and the associated tariff sheets?

**Recommendation:** Yes. FPL's request for mid-course correction to its 2018 capacity cost recovery factors and the associated tariff sheets should be approved. The recommended capacity cost recovery factors are presented in Attachment A and the associated tariff sheets are presented in Attachment B. The revised capacity cost recovery factors and the associated tariff sheets should become effective with the July 2018 billing cycle, which begins on July 1, 2018. The Commission should give staff administrative authority to approve the tariff sheets implementing the approved rate adjustments. (Barrett, Galloway, Draper, Guffey)

**Staff Analysis:** The Tax Cut and Jobs Act of 2017 was signed into law on December 22, 2017, about 4 months after FPL filed its projection testimony and cost recovery schedules for 2018. FPL's Mid-Course Petition is the second similar filing made in this docket in 2018, the first occurring when the impact of the St. Johns River Power Park Transaction was addressed by Commission in the First Mid-Course Order.<sup>3</sup> As noted in the instant petition, this proposed correction is primarily applicable to capacity and environmental cost recovery factors, and only minimally applicable to the Conservation Cost Recovery Clause.<sup>4</sup> In addition to filing its Mid-Course Petition in Docket No. 20180001-EI (the Fuel and Capacity Cost Recovery Clause docket), FPL filed it in Docket Nos. 20180007-EI (the Environmental Cost Recovery Clause), and in 20180046-EI (Consideration of the tax impacts associated with Tax Cuts and Jobs Act of 2017 for Florida Power & Light Company).

### Midcourse Adjustment for Capacity Cost Recovery (CCR) Factors

FPL's currently authorized 2018 fuel and capacity amounts and factors are codified in the First Mid-Course Order, which projected total capacity costs of \$282,109,414 for 2018. Because this projection of total capacity-related costs was developed before the Tax Cuts and Jobs Act of 2017 lowered the federal income tax rate for corporations from 35 percent to 21 percent, many of the costs embedded in that total are now overstated. Federal income tax rate amounts are included in the calculation of the capacity costs that have a capital component, such as the Cedar Bay, Indiantown, and St. John River Power Park Transactions, or the capital-related costs for Incremental Power Plant Security, as shown in Schedule E12A/B of FPL's Mid-Course Petition. When the lower federal income tax amount is incorporated into the projected costs, the revised total capacity costs for 2018 are \$261,614,030. When the true-up provision amounts are applied and final calculations are performed, the total end-of-period balance reflects that FPL would over-recover its capacity costs for 2018 by \$12,071,089, or 4.61 percent.

If FPL's Mid-Course Petition is granted, this amount would be recovered through reduced capacity cost recovery factors for July–December 2018. For a residential customer using 1,000

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<sup>3</sup>Order No. PSC-2018-0105-PCO-EI, issued February 26, 2018, in Docket No. 20180001-EI, *In re: Fuel and Purchased Power Cost Recovery Clause with Generating Performance Incentive Factor*.

<sup>4</sup>In its Mid-Course Petition, FPL stated that the Conservation Cost Recovery Clause adjustment attributable to the Tax Cut and Jobs Act of 2017 was too small to warrant a mid-course correction; instead, the Company believes the adjustment can be recovered in the ordinary true-up process for that clause.

kilowatt hours (kWh) of electricity, the capacity portion of their bill will be reduced by \$0.23. The revised capacity cost recovery factors are reflected on Attachment A.

As noted previously, the FPL Mid-Course Petition also seeks to reduce the respective 2018 environmental cost recovery factors, as addressed in a recommendation filed in Docket No. 20180007-EI. A typical bill comparison for a residential customer using 1,000 kWh of electricity is presented in Attachment C showing all of the changes that would be implemented in the July billing cycle, pending Commission approval.

### **Bill Impact and Customer Notifications**

Consistent with the First Mid-Course Order, the current bill for a residential customer using 1,000 kWh of electricity for the period March-December, 2018, is \$99.37 per month, with a capacity cost recovery component of \$2.57 per month.<sup>5</sup> As proposed, the capacity cost recovery component will be reduced by \$0.23 per month, to \$2.34 per month. In addition, an environmental cost recovery clause reduction of \$0.36 per month is being addressed in Docket No. 20180007-EI, and a small change is proposed for the storm bond charge.<sup>6</sup> The sum of those three changes results in a slight reduction to the Gross Receipts Tax, as well. Pending the Commission's approval in this matter and the similar consideration in Docket No. 20180007-EI, the proposed bill for a residential customer using 1,000 kWh of electricity for July-August, 2018, is projected to be \$98.87 per month, as shown and presented in Column 3 from Table 1 of Attachment C.

Staff believes implementing reduced capacity cost recovery factors is in the best interests of FPL's customers because the factors would be decreasing, and customers would receive the benefit of reduced rates as quickly as administratively possible.

In its May 30 2018, response to Commission staff's Second Data Request, Question No. 5, FPL stated that it will notify customers with bill inserts 30 days in advance of the rates taking effect. In addition, FPL stated the billing changes identified in the instant petition will be addressed in the Company's next quarterly newsletter (to be published in July 2018). FPL's website will include links to show the proposed rate schedules for residential and business rate classes that are proposed to become effective July 1, 2018. The Company stated that physical restrictions on bill

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<sup>5</sup>These amounts do not reflect any storm-related charges attributable to named storms that impacted FPL's service territory in the 2017 hurricane season, nor do they reflect a true-up adjustment to the storm restoration surcharge FPL addressed in its May 30, 2018, response to Commission staff's Second Data Request, Question No. 7. In addition, these amounts do not reflect any changes that may be approved by the Commission in other docketed matters.

<sup>6</sup>The storm bond charge will become effective on June 1, 2018, whereas the clause-adjustment changes are scheduled to become effective July 1, 2018. In its May 30 2018, response to Commission staff's Second Data Request, Question No. 7, FPL stated that it included the billing change for storm bond charge in Schedule E-10 for informational purposes only, in order to provide the full impact on the typical 1,000 kWh residential bill from current rates to the proposed rates that would go into effect on July 1, 2018. On April 2, 2018, in Docket No. 20060038-EI, FPL filed its routine storm charge quarterly true-up adjustment to the storm recovery bond repayment charges and the storm recovery bond tax charges. Based on this true-up adjustment, the residential storm bond charge will increase from \$1.38 to \$1.48 for the typical residential 1,000 kWh customer bill.

inserts limit the amount of detail that can be included in such notifications, but noted its customers can access detailed billing information from links on the Company's website.<sup>7</sup>

If approved by the Commission, this mid-course correction will result in lower capacity cost recovery factors for FPL's customers. This mid-course correction was filed by FPL with the intention of the proposed decrease in rates becoming effective July 1, 2018. Typically, effective dates are set a minimum of 30 days after a Commission vote modifying the charges as the result of a mid-course correction.<sup>8</sup> This time limit is imposed in order to not have new rates applied to energy consumed before the effective date of the Commission's action, i.e., the date of the vote. However, the Commission has also implemented charges in less than 30 days when circumstances warrant.<sup>9</sup> In this instance, the interval between the Commission's vote on this matter (June 5, 2018) and the proposed implementation date (expected to be July 1, 2018) is 25 days. Because this filing, if approved, results in a decrease to cost recovery factors, staff believes the 25 day interval is sufficient.

## Conclusion

Staff recommends the Commission approve FPL's request for mid-course correction to its 2018 capacity cost recovery factors and the associated tariff sheets. The recommended capacity cost recovery factors are presented in Attachment A and the associated tariff sheets are presented in Attachment B. The revised capacity cost recovery factors and the associated tariff sheets should become effective with the July 2018 billing cycle, which begins on July 1, 2018. The Commission should give staff administrative authority to approve the tariff sheets implementing the approved rate adjustments.

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<sup>7</sup>As of May 30, 2018, the date FPL filed its response to Commission staff's Second Data Request, draft copies of the newsletter article were not yet available for staff to review. However, FPL committed to provide advance copies before the publication date.

<sup>8</sup>*Gulf Power Co. v. Cresse*, 410 So. 2d 492 (Fla. 1982); Order No. PSC-96-0907-FOF-EI, issued on July 15, 1996, in Docket No. 19960001-EI, *In re: Fuel and purchased power cost recovery clause and generating performance incentive factor*; Order No. PSC-1996-0908-FOF-EI, issued July 15, 1996, in Docket No. 19960001-EI, *In re: Fuel and purchased power cost recovery clause and generating performance incentive factor*; Order No. PSC-97-0021-FOF-EI, issued on January 6, 1997, in Docket No. 19970001-EI, *In re: Fuel and purchased power cost recovery clause and generating performance incentive factor*.

<sup>9</sup>Order No. PSC-01-0963-PCO-EI, issued April 18, 2001, in Docket No. 20010001-EI, *In re: Fuel and purchased power cost recovery clause and generating performance incentive factor* (allowing recovery of increase in fuel factor in order to decrease the carrying costs and therefore the total amount ratepayers were ultimately required to repay.); Order No. PSC-00-2383-FOF-GU, issued December 12, 2000, in Docket No. 20000003-GU, *In re: Purchased gas adjustment (PGA) true-up* (allowing recovery of an increased gas fuel factor due to drastic increases in natural gas prices in winter of 2000-2001.); Order No. PSC-15-0161-PCO-EI, issued April 30, 2015, in Docket No. 20150001-EI, *In re: Fuel and Purchased Power Cost Recovery Clause with Generating Performance Incentive Factor* (approving FPL's petition for a mid-course correction, thereby reducing fuel factors with less than 30 days notice).

**Issue 2:** Should this docket be closed?

**Recommendation:** The fuel docket is on-going and should remain open. (Brownless)

**Staff Analysis:** The fuel docket is on-going and should remain open.

**Table 1**  
**FPL Revised Capacity Cost Recovery Factors**  
**for the Period July-December, 2018**

<b>Rate Schedule</b>	<b>\$/kW</b>	<b>\$/kWh</b>	<b>Reservation Demand Charge (RDC) \$/kW<sup>10</sup></b>	<b>Sum of Daily Demand Charge (SDD) \$/kW<sup>11</sup></b>
RS1/RTR1	-	0.00234	-	-
GS1/GST1	-	0.00220	-	-
GSD1/GSDT1/HLFT1	0.70	-	-	-
OS2	-	0.00098	-	-
GSLD1/GSLDT1/CS1/CST1/HLFT2	0.84	-	-	-
GSLD2/GSLDT2/CS2/CST2/HLFT3	0.78	-	-	-
GSLD3/GSLDT3/CS3/CST3	0.79	-	-	-
SST1T	-	-	\$0.10	\$0.05
SST1D1/SST1D2/SST1D3	-	-	\$0.11	\$0.05
CILC D/CILC G	0.89	-	-	-
CILC T	0.86	-	-	-
MET	0.88	-	-	-
OL1/SL1/SL1M/PL1	-	0.00018	-	-
SL2/SL2M/GSCU1	-	0.00153	-	-

Source: Schedule E1-E, Appendix 1, Page 5 of 20 from Mid-Course Petition

<sup>10</sup>RDC=((Total Capacity Costs)/(Projected Avg. 12CP @gen)(.10)(demand loss expansion factor)/12 months

<sup>11</sup>SDD=((Total Capacity Costs)/(Projected Avg. 12CP @gen)(21 on peak days)(demand loss expn. factor)/12 months



FLORIDA POWER & LIGHT COMPANY  
Forty-EighthNinth Revised Sheet No. 8.030  
Cancels Forty-SeventhEighth Revised Sheet No. 8.030

BILLING ADJUSTMENTS

The following charges are applied to the Monthly Rate of each rate schedule as indicated and are calculated in accordance with the formula specified by the Florida Public Service Commission.

RATE SCHEDULE	FUEL			CONSERVATION		CAPACITY		ENVIRON- MENTAL ¢/kWh
	¢/kWh Levelized	¢/kWh On-Peak	¢/kWh Off-Peak	¢/kWh	\$/kW	¢/kWh	\$/kW	
RS-1, RS-1 w/RTR-1 1 <sup>st</sup> 1,000 kWh	2.273			0.153		<del>0.2570</del> 234		<del>0.1580.122</del>
RS-1, RS-1 w/ RTR-1 all addn kWh	3.273			0.153		<del>0.2570</del> 234		<del>0.1580.122</del>
RS-1 w/RTR-1 All kWh		0.441	(0.182)	0.153		<del>0.2570</del> 234		<del>0.1580.122</del>
GS-1	2.611			0.145		<del>0.2440</del> 220		<del>0.1490.115</del>
GST-1		3.052	2.429	0.145		<del>0.2440</del> 220		<del>0.1490.115</del>
GSD-1, GSD-1 w/SDTR (Jan – May)(Oct – Dec)	2.611				0.48		<del>0.770.70</del>	<del>0.1350.105</del>
GSD-1 w/SDTR (Jun-Sept)		3.792	2.462		0.48		<del>0.770.70</del>	<del>0.1350.105</del>
GSDT-1, HLFT-1 GSDT-1w/SDTR (Jan – May)(Oct – Dec)		3.052	2.429		0.48		<del>0.770.70</del>	<del>0.1350.105</del>
GSDT-1 w/SDTR (Jun-Sept)		3.792	2.462		0.48		<del>0.770.70</del>	<del>0.1350.105</del>
GSLD-1, CS-1, GSLD-1w/SDTR (Jan – May)(Oct – Dec)	2.610				0.57		<del>0.940.84</del>	<del>0.1300.101</del>
GSLD-1 w/SDTR (Jun-Sept)		3.790	2.461		0.57		<del>0.940.84</del>	<del>0.1300.101</del>
GSLDT-1, CST-1, HLFT-2, GSLDT-1 w/SDTR (Jan-May & Oct-Dec)		3.051	2.428		0.57		<del>0.940.84</del>	<del>0.1300.101</del>
GSLDT-1 w/SDTR (Jun-Sept)		3.790	2.461		0.57		<del>0.940.84</del>	<del>0.1300.101</del>
GSLD-2, CS-2, GSLD-2 w/SDTR (Jan – May)(Oct – Dec)	2.596				0.56		<del>0.850.78</del>	<del>0.1140.089</del>
GSLD-2 w/SDTR (Jun- Sept)		3.772	2.449		0.56		<del>0.850.78</del>	<del>0.1140.089</del>
GSLDT-2, CST-2, HLFT-3, GSLDT-2 w/SDTR (Jan – May)(Oct – Dec)		3.036	2.416		0.56		<del>0.850.78</del>	<del>0.1140.089</del>
GSLDT-2 w/SDTR (Jun-Sept)		3.772	2.449		0.56		<del>0.850.78</del>	<del>0.114 0.089</del>
GSLD-3, CS-3	2.545				0.57		<del>0.870.79</del>	<del>0.1150.090</del>
GSLDT-3, CST-3		2.974	2.367		0.57		<del>0.870.79</del>	<del>0.1150.090</del>

NOTE: The Billing Adjustments for additional Rate Schedules are found on Sheet No. 8.030.1

Issued by: ~~S. E. Romig~~ Tiffany Cohen, Director, Rates and Tariffs  
Effective: ~~March 1, 2018~~

FLORIDA POWER & LIGHT COMPANY

Twenty-~~Fourth~~<sup>Fifth</sup> Revised Sheet No. 8.030.1  
Cancels Twenty-~~Third~~<sup>Fourth</sup> Revised Sheet No. 8.030.1

(Continued from Sheet No. 8.030) BILLING ADJUSTMENTS (Continued)										
RATE	FUEL			CONSERVATION			CAPACITY			ENVIRON- MENTAL
SCHEDULE	¢/kWh	¢/kWh	¢/kWh	¢/kWh	\$/kW		¢/kWh	\$/kW		¢/kWh
	Levelized	On- Peak	Off- Peak							
OS-2	2.596			0.082			<del>0.1080.0</del> <u>98</u>			<del>0.0820.067</del>
MET	2.596				0.60		<del>0.960.</del> <u>88</u>			<del>0.1270.099</del>
CILC-1(G)		3.052	2.429		0.63		<del>0.970.</del> <u>89</u>			<del>0.1150.090</del>
CILC-1(D)		3.035	2.415		0.63		<del>0.970.</del> <u>89</u>			<del>0.1150.090</del>
CILC-1(T)		2.974	2.367		0.61		<del>0.940.</del> <u>86</u>			<del>0.1080.085</del>
SL-1,OL-1, RL-1, PL- 1/SL-1M, LT-1	2.528			0.042			<del>0.0200.0</del> <u>18</u>			<del>0.0390.027</del>
SL-2, GSCU-1/SL- 2M	2.611			0.111			<del>0.1680.1</del> <u>53</u>			<del>0.1080.085</del>
					RDD	DDC		RDD	DDC	
SST-1(T)		2.974	2.367		0.07	0.03	<del>0.110.</del> <u>10</u>		0.05	<del>0.1040.080</del>
SST-1(D1)		3.052	2.429		0.07	0.03	<del>0.120.</del> <u>11</u>	<del>0.060</del> <u>.05</u>		<del>0.1250.098</del>
SST-1(D2)		3.051	2.428		0.07	0.03	<del>0.120.</del> <u>11</u>	<del>0.060</del> <u>.05</u>		<del>0.1250.098</del>
SST-1(D3)		3.036	2.416		0.07	0.03	<del>0.120.</del> <u>11</u>	<del>0.060</del> <u>.05</u>		<del>0.1250.098</del>
ISST-1(D)		3.035	2.415		0.07	0.03	<del>0.120.</del> <u>11</u>	<del>0.060</del> <u>.05</u>		<del>0.1250.098</del>
ISST-1(T)		2.974	2.367		0.07	0.03	<del>0.110.</del> <u>10</u>		0.05	<del>0.1040.080</del>

Issued by: ~~S. E. Romig~~<sup>Tiffany Cohen</sup>, Director, Rates and Tariffs  
Effective: ~~March 1, 2018~~

**Table 1**  
**FPL Typical 1,000-kWh Residential Customer Bill Comparison**  
**for the period July-December, 2018**

(1)	(2)	(3)	(4)	(5)	(6)
Component	Current March 2018	Proposed <sup>12</sup> July-August 2018	Net Difference <sup>13</sup>	Proposed <sup>14</sup> September- December 2018	Net Difference <sup>15</sup>
Base Charge	\$67.10	\$67.10	\$0.00	\$66.88	(\$0.22)
Fuel Cost Recovery	\$22.73	\$22.73	\$0.00	\$22.93	\$0.20
Energy Conservation Cost Recovery	\$1.53	\$1.53	\$0.00	\$1.53	\$0.00
Capacity Cost Recovery	\$2.57	\$2.34	(\$0.23)	\$2.34	\$0.00
Environmental Cost Recovery	\$1.58	\$1.22	(\$0.36)	\$1.22	\$0.00
Storm Bond Charge	\$1.38	\$1.48	\$0.10	\$1.48	\$0.00
Interim Storm Restoration Surcharge	<u>\$0.00</u>	<u>\$0.00</u>	<u>\$0.00</u>	<u>\$0.00</u>	<u>\$0.00</u>
Subtotal	\$96.89	\$96.40	(\$0.49)	\$96.38	(\$0.02)
Gross Receipts Tax	<u>\$2.48</u>	<u>\$2.47</u>	<u>(\$0.01)</u>	<u>\$2.47</u>	\$0.00
<b>Totals</b>	<b><u>\$99.37</u></b>	<b><u>\$98.87</u></b>	<b><u>(\$0.50)</u></b>	<b><u>\$98.85</u></b>	<b>(\$0.02)</b>

Source: Schedule E-10, attached to FPL's Mid-Course Petition, dated April 16, 2018.

<sup>12</sup>Reflects approval of the Mid-Course corrections to Capacity and Environmental Cost Recovery Clause amounts, and a true-up adjustment in storm charges, as filed in Docket No. 20180001-EI.

<sup>13</sup>The Net Difference shown in Column 4 of Table 1 reflects the true-up adjustment in storm charges effective June 1, 2018, and the Mid-Course Corrections to Capacity and Environmental Cost Recovery Clause amounts, effective July 1, 2018. It does not reflect the Martin-Riviera Natural Gas Pipeline transfer petition in Docket No. 20170231-EI, which, if approved, would change Base and Fuel Cost Recovery amounts, effective September 1, 2018.

<sup>14</sup>Reflects approval of the proposed Martin-Riviera pipeline lateral transfer, pending in Docket No. 20170231-EI.

<sup>15</sup>The Net Difference shown in Column 6 of Table 1 reflects the true-up adjustment in storm charges effective June 1, 2018, the Mid-Course Corrections to Capacity and Environmental Cost Recovery Clause amounts effective July 1, 2018, and the Martin-Riviera Natural Gas Pipeline transfer petition that is pending in Docket No. 20170231-EI, which, if approved, would change Base and Fuel Cost Recovery amounts, effective September 1, 2018.



# Item 8

State of Florida



## Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD  
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

**DATE:** May 23, 2018

**TO:** Office of Commission Clerk (Stauffer)

**FROM:** Division of Engineering (Mtenga, King)

Office of the General Counsel (Murphy)

**RE:** Docket No. 20180007-EI – Environmental cost recovery clause.

**AGENDA:** 06/05/18 – Regular Agenda – Interested Persons May Participate

**COMMISSIONERS ASSIGNED:** All Commissioners

**PREHEARING OFFICER:** Clark

**CRITICAL DATES:** None

**SPECIAL INSTRUCTIONS:** Please take up this item following the recommendation for Docket No. 20180001-EI.

### Case Background

On April 16, 2018, Florida Power & Light Company (FPL or Company) filed a Petition for Mid-Course Corrections to its 2018 Environmental Cost Recovery Clause (ECRC)<sup>1</sup> factors that reflect the impact of the Tax Cuts and Jobs Act of 2017 (Mid-Course Petition). By its Mid-Course Petition, FPL seeks to reduce the 2018 ECRC factors that were approved in Order No. PSC-2018-0100-FOF-EI.<sup>2</sup>

Mid-course corrections are rare in the ECRC docket and are more typical in the fuel docket. Mid-course corrections are considered preliminary procedural decisions, and any over-recoveries or under-recoveries resulting from the approval by the Florida Public Service Commission (Commission) may be adjusted in the following year proceeding.

<sup>1</sup>The capacity cost recovery portion of FPL's Mid-Course Petition will be addressed in Docket No. 20180001-EI.

<sup>2</sup>Order No. PSC-2018-0100-FOF-EI, issued February 22, 2018, in Docket No. 20180007-EI, *In re: Environmental Cost Recovery Clause*.

Docket No. 20180007-EI

Date: May 23, 2018

The Tax Cuts and Jobs Act of 2017 (Tax Act) was signed into law on December 22, 2017, about four months after FPL filed its projection testimony and cost recovery schedules for 2018. In addition to filing its Mid-Course Petition in Docket No. 20180007-EI, FPL filed similar petitions in Docket No. 20180001-EI, the Fuel and Capacity Cost Recovery Clause docket, and in Docket No. 20180046-EI, Consideration of the tax impacts associated with Tax Cuts and Jobs Act of 2017 for FPL.

The Commission has jurisdiction over this matter pursuant to Section 366.05 and 366.8255, Florida Statutes. (F.S.)



## Discussion of Issues

**Issue 1:** Should the Commission approve FPL's Mid-Course Petition to correct its 2018 ECRC factors and associated tariff sheets?

**Recommendation:** Yes. Staff recommends approval of FPL's Mid-Course Petition which was filed to address a federal tax reduction. Approval will allow for a reduction in the ECRC factors and will decrease customer bills. The revised factors and associated tariffs should become effective July 1, 2018. (Mtenga)

**Staff Analysis:** The projected ECRC costs for 2018 were developed before the Tax Act was signed into law. The Tax Act will have the effect of lowering the federal income tax rate for corporations from 35 percent to 21 percent; therefore, some of the costs embedded into the total projected ECRC costs for 2018 are overstated. Federal income tax amounts are included in the calculation of the costs that have a capital component. Adjustments for tax impacts on revenue requirements recovered through the ECRC will change the currently approved factors. The impact of the Tax Act on FPL's ECRC cost projections result in an over-recovery of approximately \$19.1 million or 9.2 percent. Approval of FPL's Mid-Course Petition will result in a reduction to the typical 1,000 kWh monthly residential customer bill of \$0.36. The revised tariffs are included as Attachment A. In its May 10, 2018, response to staff's second set of interrogatories No. 19, FPL indicated that the Company will include a short bill insert on all customer bills 30 days in advance of the rates taking effect, and will provide updated rate schedules on its website.

FPL's Mid-Course Petition was filed with the intention of the proposed decrease in rates becoming effective July 1, 2018. Typically, effective dates are set at a minimum of 30 days after a Commission vote modifying the charges as the result of a mid-course correction.<sup>3</sup> This time limit is imposed in order to not have new rates applied to energy consumed before the effective date of the Commission's action. However, the Commission has also implemented charges in less than 30 days when circumstances warrant.<sup>4</sup> In this instance, the interval between the Commission's vote on this matter (June 5, 2018), and the proposed implementation date

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<sup>3</sup>*Gulf Power Co. v. Cresce*, 410 So. 2d 492 (Fla. 1982); Order No. PSC-96-0907-FOF-EI, issued July 15, 1996, in Docket No. 19960001-EI, *In re: Fuel and purchased power cost recovery clause and generating performance incentive factor*; Order No. PSC-96-0908-FOF-EI, issued July 15, 1996, in Docket No. 19960001-EI, *In re: Fuel and purchased power cost recovery clause and generating performance incentive factor*; Order No. PSC-97-0021-FOF-EI, issued January 6, 1997, in Docket No. 19970001-EI, *In re: Fuel and purchased power cost recovery clause and generating performance incentive factor*.

<sup>4</sup>Order No. PSC-01-0963-PCO-EI, issued April 18, 2001, in Docket No. 20010001-EI, *In re: Fuel and purchased power cost recovery clause and generating performance incentive factor* (allowing recovery of increase in fuel factor in order to decrease the carrying costs and therefore the total amount ratepayers were ultimately required to repay.); Order No. PSC-00-2383-FOF-GU, issued December 12, 2000, in Docket No. 20000003-GU, *In re: Purchased gas adjustment (PGA) true-up* (allowing recovery of an increased gas fuel factor due to drastic increases in natural gas prices in winter of 2000-2001.); Order No. PSC-15-0161-PCO-EI, issued April 30, 2015, in Docket No. 20150001-EI, *In re: Fuel and Purchased Power Cost Recovery Clause with Generating Performance Incentive Factor* (approving FPL's petition for a mid-course correction, thereby reducing fuel factors with less than 30 days notice).

(expected to be July 1, 2018) is 25 days. Since this filing, if approved, results in a decrease to cost recovery factors, staff recommends that the 25 day interval is sufficient.

Staff recommends approval of FPL's Mid-Course Petition which was filed to address a federal tax reduction. Approval will allow for a reduction in the ECRC factors and will decrease customer bills. The revised factors and associated tariffs should become effective July 1, 2018.

Date: May 23, 2018

**Issue 2:** Should this docket be closed?

**Recommendation:** No. The ECRC docket is on-going and should remain open. (Murphy)

**Staff Analysis:** The ECRC docket is on-going and should remain open.



FLORIDA POWER & LIGHT COMPANY

Forty-~~Eighth~~<sup>Ninth</sup> Revised Sheet No. 8.030  
Cancels Forty-~~Seventh~~<sup>Eighth</sup> Revised Sheet No. 8.030

BILLING ADJUSTMENTS

The following charges are applied to the Monthly Rate of each rate schedule as indicated and are calculated in accordance with the formula specified by the Florida Public Service Commission.

RATE SCHEDULE	FUEL			CONSERVATION		CAPACITY		ENVIRON- MENTAL \$/kWh
	\$/kWh	\$/kWh	\$/kWh	\$/kWh	\$/kW	\$/kWh	\$/kW	
	Levelized	On-Peak	Off-Peak					
RS-1, RS-1 w/RTR-1 1 <sup>st</sup> 1,000 kWh	2.273			0.153		<del>0.2570</del> 234		<del>0.1580</del> 122
RS-1, RS-1 w/ RTR-1 all addn kWh	3.273			0.153		<del>0.2570</del> 234		<del>0.1580</del> 122
RS-1 w/RTR-1 All kWh		0.441	(0.182)	0.153		<del>0.2570</del> 234		<del>0.1580</del> 122
GS-1	2.611			0.145		<del>0.2440</del> 220		<del>0.1490</del> 115
GST-1		3.052	2.429	0.145		<del>0.2440</del> 220		<del>0.1490</del> 115
GSD-1, GSD-1 w/SDTR (Jan - May)(Oct - Dec)	2.611				0.48	<del>0.770</del> 70		<del>0.1350</del> 105
GSD-1 w/SDTR (Jun-Sept)		3.792	2.462		0.48	<del>0.770</del> 70		<del>0.1350</del> 105
GSDT-1, HLFT-1 GSDT-1 w/SDTR (Jan - May)(Oct - Dec)		3.052	2.429		0.48	<del>0.770</del> 70		<del>0.1350</del> 105
GSDT-1 w/SDTR (Jun-Sept)		3.792	2.462		0.48	<del>0.770</del> 70		<del>0.1350</del> 105
GSLD-1, CS-1, GSLD-1 w/SDTR (Jan - May)(Oct - Dec)	2.610				0.57	<del>0.940</del> 84		<del>0.1300</del> 101
GSLD-1 w/SDTR (Jun-Sept)		3.790	2.461		0.57	<del>0.940</del> 84		<del>0.1300</del> 101
GSLDT-1, CST-1, HLFT-2, GSLDT-1 w/SDTR (Jan-May & Oct-Dec)		3.051	2.428		0.57	<del>0.940</del> 84		<del>0.1300</del> 101
GSLDT-1 w/SDTR (Jun-Sept)		3.790	2.461		0.57	<del>0.940</del> 84		<del>0.1300</del> 101
GSLD-2, CS-2, GSLD-2 w/SDTR (Jan - May)(Oct - Dec)	2.596				0.56	<del>0.850</del> 78		<del>0.1140</del> 089
GSLD-2 w/SDTR (Jun- Sept)		3.772	2.449		0.56	<del>0.850</del> 78		<del>0.1140</del> 089
GSLDT-2, CST-2, HLFT-3, GSLDT-2 w/SDTR (Jan - May)(Oct - Dec)		3.036	2.416		0.56	<del>0.850</del> 78		<del>0.1140</del> 089
GSLDT-2 w/SDTR (Jun-Sept)		3.772	2.449		0.56	<del>0.850</del> 78		<del>0.1140</del> 089
GSLD-3, CS-3	2.545				0.57	<del>0.870</del> 79		<del>0.1150</del> 090
GSLDT-3, CST-3		2.974	2.367		0.57	<del>0.870</del> 79		<del>0.1150</del> 090

NOTE: The Billing Adjustments for additional Rate Schedules are found on Sheet No. 8.030.1

Issued by: ~~S. E. Romig~~ <sup>Tiffany Cohen</sup>, Director, Rates and Tariffs  
Effective: ~~March 1, 2018~~

FLORIDA POWER & LIGHT COMPANY

Twenty-Fourth Revised Sheet No. 8.030.1  
Cancels Twenty-Third Revised Sheet No. 8.030.1

(Continued from Sheet No. 8.030) BILLING ADJUSTMENTS (Continued)										
RATE	FUEL			CONSERVATION			CAPACITY			ENVIRON- MENTAL
SCHEDULE	Levelized	On- Peak	Off- Peak	g/kWh	\$/kW		g/kWh	\$/kW		g/kWh
OS-2	2.596			0.082			<del>0.1080</del> 0.098			<del>0.0820</del> 0.067
MET	2.596				0.60		<del>0.060</del> 0.088			<del>0.1220</del> 0.099
CILC-1(G)		3.052	2.429		0.63		<del>0.070</del> 0.089			<del>0.1150</del> 0.090
CILC-1(D)		3.035	2.415		0.63		<del>0.070</del> 0.089			<del>0.1150</del> 0.090
CILC-1(T)		2.974	2.367		0.61		<del>0.040</del> 0.086			<del>0.1080</del> 0.085
SL-1,OL-1, RL-1, PL-1/SL-1M, LT-1	2.528			0.042			<del>0.0200</del> 0.018			<del>0.0300</del> 0.027
SL-2, GSCU-1/SL-2M	2.611			0.111			<del>0.1680</del> 0.153			<del>0.1080</del> 0.085
					RDD	DDC		RDD	DDC	
SST-1(T)		2.974	2.367		0.07	0.03	<del>0.110</del> 0.10		0.05	<del>0.1040</del> 0.080
SST-1(D1)		3.052	2.429		0.07	0.03	<del>0.120</del> 0.11	<del>0.060</del> 0.05		<del>0.1250</del> 0.098
SST-1(D2)		3.051	2.428		0.07	0.03	<del>0.120</del> 0.11	<del>0.060</del> 0.05		<del>0.1250</del> 0.098
SST-1(D3)		3.036	2.416		0.07	0.03	<del>0.120</del> 0.11	<del>0.060</del> 0.05		<del>0.1250</del> 0.098
ISST-1(D)		3.035	2.415		0.07	0.03	<del>0.120</del> 0.11	<del>0.060</del> 0.05		<del>0.1250</del> 0.098
ISST-1(T)		2.974	2.367		0.07	0.03	<del>0.110</del> 0.10		0.05	<del>0.1040</del> 0.080

Issued by: ~~S. E. Romig~~ Tiffany Cohen, Director, Rates and Tariffs  
Effective: ~~March 1, 2018~~



# Item 9



# Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD  
TALLAHASSEE, FLORIDA 32399-0850

**-M-E-M-O-R-A-N-D-U-M-**

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**DATE:** May 23, 2018

**TO:** Office of Commission Clerk (Stauffer)

**FROM:** Division of Engineering (Wooten, Ellis, Wright) *POE*  
Division of Economics (Wu) *W*  
Office of the General Counsel (Murphy) *CM*

**RE:** Docket No. 20180073-EQ – Petition for approval of amended standard offer contract (Schedule COG-2) based on a combustion turbine avoided unit, by Duke Energy Florida, LLC. *TK*

**AGENDA:** 06/05/18 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

**COMMISSIONERS ASSIGNED:** All Commissioners

**PREHEARING OFFICER:** Administrative

**CRITICAL DATES:** None

**SPECIAL INSTRUCTIONS:** Staff recommends the Commission simultaneously consider Docket Nos. 20180073-EQ, 20180081-EQ, 20180082-EQ, 20180083-EQ, and 20180091-EQ.

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## Case Background

Section 366.91(3), Florida Statutes (F.S.), requires that each investor-owned utility (IOU) continuously offer to purchase capacity and energy from renewable energy generators and small qualifying facilities. Florida Public Service Commission (Commission) Rules 25-17.200 through 25-17.310, Florida Administrative Code (F.A.C.), implement the statute and require each IOU to file with the Commission, by April 1 of each year, a standard offer contract based on the next avoidable fossil fueled generating unit of each technology type identified in the Utility's current Ten-Year Site Plan. On March 29, 2018, Duke Energy Florida, Inc. (DEF) filed a petition for approval of its amended standard offer contract and rate schedule COG-2 based on its 2018 Ten-Year Site Plan.

DEF uses a value that is filed with the Federal Energy Regulatory Commission (FERC) every year on May 1 as a component of the delivery voltage adjustment factors found on Sheet 9.458 of its standard offer contract. While this value has historically been available for DEF's standard offer contract filing, this year the value was calculated after the April 1 filing deadline. On May 8, 2018, DEF provided revisions to Sheet 9.458 containing updated delivery voltage adjustment factors reflecting the newly calculated value filed with FERC.<sup>1</sup> On May 16, 2018, DEF also filed revisions to Sheet 9.415 correcting the cost of the avoided unit's variable operation and maintenance from 0.0931 cents per kilowatt-hour (¢/kWh) to 0.931 ¢/kWh.

In addition to the above revisions, DEF's standard offer contract and rate schedule COG-2 include updates to avoided unit specifications, calendar dates, and a monthly capacity payment example and its accompanying capacity payment parameters. Also included are typographical corrections, updates to position titles, and a change to DEF's name from Duke Energy Florida, Inc., to Duke Energy Florida, LLC.

The Commission has jurisdiction over this standard offer contract pursuant to Sections 366.04 through 366.06 and 366.91, F.S.

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<sup>1</sup>Document No. 03571-2018, filed May 8, 2018, in Docket No. 20180073-EQ.



### Discussion of Issues

**Issue 1:** Should the Commission approve the amended standard offer contract and associated rate schedule COG-2 filed by Duke Energy Florida?

**Recommendation:** Yes. The provisions of DEF's amended standard offer contract and associated rate schedule COG-2, as filed on March 29, 2018, and as modified by the revisions to Sheet 9.458 filed on May 8, 2018, and Sheet 9.415 filed on May 16, 2018, conform to all requirements of Rules 25-17.200 through 25-17.310, F.A.C. The amended standard offer contract provides flexibility in the arrangements for payments so that a developer of renewable generation may select the payment stream best suited to its financial needs. (Wright)

**Staff Analysis:** Rule 25-17.250, F.A.C., requires that DEF, an IOU, continuously make available a standard offer contract for the purchase of firm capacity and energy from renewable generating facilities (RF) and small qualifying facilities (QF) with design capacities of 100 kilowatts (kW) or less. Pursuant to Rule 25-17.250(1) and (3), F.A.C., the standard offer contract must provide a term of at least 10 years, and the payment terms must be based on the Utility's next avoidable fossil-fueled generating unit identified in its most recent Ten-Year Site Plan or, if no avoided unit is identified, its next avoidable planned purchase. DEF has identified a 226 megawatt (MW) natural gas-fueled combustion turbine (CT) as its next planned generating unit in its 2018 Ten-Year Site Plan. The projected in-service date of the unit is June 1, 2027.

Under DEF's standard offer contract, the RF/QF operator commits to certain minimum performance requirements based on the identified avoided unit, such as being operational and delivering an agreed upon amount of capacity by the in-service date of the avoided unit, and thereby becomes eligible for capacity payments in addition to payments received for energy. The standard offer contract may also serve as a starting point for negotiation of contract terms by providing payment information to an RF/QF operator, in a situation where one or both parties desire particular contract terms other than those established in the standard offer.

In order to promote renewable generation, the Commission requires each IOU to offer multiple options for capacity payments, including the options to receive early or levelized payments. If the RF/QF operator elects to receive capacity payments under the normal or levelized contract options, it will receive as-available energy payments only until the in-service date of the avoided unit (in this case June 1, 2027), and thereafter begin receiving capacity payments in addition to the energy payments. If either the early or early levelized option is selected, then the operator will begin receiving capacity payments earlier than the in-service date of the avoided unit. However, payments made under the early capacity payments options tend to be lower in the later years of the contract term because the net present value (NPV) of the total payments must remain equal for all contract payment options.

Table 1 below contains estimates of the annual payments for each payment option available under the amended standard offer contract to an operator with a 50 MW renewable facility operating at a capacity factor of 95 percent, which is the minimum capacity factor required under the contract to qualify for full capacity payments. Normal and levelized capacity payments begin in 2027, reflecting the projected in-service date of the avoided unit (June 1, 2027).



**Table 1 – Estimated Annual Payments to a 50 MW Renewable Facility  
(95% Capacity Factor)**

Year	Energy Payment	Capacity Payment (By Type)			
		Normal	Levelized	Early	Early Levelized
	\$(000)	\$(000)	\$(000)	\$(000)	\$(000)
2019	8,553	-	-	-	-
2020	6,683	-	-	-	-
2021	5,323	-	-	-	-
2022	5,589	-	-	-	-
2023	6,343	-	-	-	-
2024	7,655	-	-	-	-
2025	9,068	-	-	2,157	2,455
2026	10,200	-	-	2,211	2,459
2027	11,473	1,695	1,906	2,266	2,462
2028	12,305	2,978	3,272	2,323	2,466
2029	13,014	3,053	3,277	2,381	2,470
2030	13,993	3,129	3,282	2,441	2,474
2031	14,108	3,207	3,287	2,502	2,478
2032	14,427	3,288	3,293	2,564	2,482
2033	15,380	3,370	3,298	2,628	2,486
2034	16,430	3,454	3,304	2,694	2,491
2035	16,682	3,540	3,310	2,761	2,495
2036	18,141	3,629	3,316	2,830	2,500
2037	18,727	3,720	3,322	2,901	2,504
2038	20,057	3,813	3,328	2,974	2,509
<b>Total</b>	244,151	38,875	38,195	35,632	34,731
<b>NPV (2018\$)</b>	114,628	14,718	14,718	14,718	14,718

Source: DEF's response to staff's first data request.<sup>2</sup>

The type-and-strike format versions of the amended standard offer contract and associated rate schedule COG-2, including the most recent revisions to Sheet 9.458 filed on May 8, 2018, and Sheet 9.415 filed on May 16, 2018, are included as Attachment A to this recommendation. All of the changes made to DEF's tariff sheets are consistent with the updated avoided unit. Revisions include updates to avoided unit specifications, calendar dates, and a monthly capacity payment example and its accompanying capacity payment parameters. Also revised are delivery voltage adjustment factors reflecting DEF's 2017 line loss analysis. In addition, there are a number of

<sup>2</sup>Document No. 03325-2018, filed April 30, 2018, in Docket No. 20180073-EQ.

unsubstantial changes including typographical corrections, updates to position titles, and a change to DEF's name from Duke Energy Florida, Inc., to Duke Energy Florida, LLC.

**Conclusion**

The provisions of DEF's amended standard offer contract and associated rate schedule COG-2, as filed on March 29, 2018, and as modified by the revisions to Sheet 9.458 filed on May 8, 2018, and Sheet 9.415 filed on May 16, 2018, conform to all requirements of Rules 25-17.200 through 25-17.310, F.A.C. The amended standard offer contract provides flexibility in the arrangements for payments so that a developer of renewable generation may select the payment stream best suited to its financial needs. Staff recommends that the revisions to the rate schedule and standard offer contract be approved.

**Issue 2:** Should this docket be closed?

**Recommendation:** Yes. This docket should be closed upon issuance of a consummating order, unless a person whose substantial interests are affected by the Commission's decision files a protest within 21 days of the issuance of the Commission's Proposed Agency Action Order. Potential signatories should be aware that, if a timely protest is filed, DEF's standard offer contract may subsequently be revised. (Murphy)

**Staff Analysis:** This docket should be closed upon the issuance of a consummating order, unless a person whose substantial interests are affected by the Commission's decision files a protest within 21 days of the issuance of the Commission's Proposed Agency Action Order. Potential signatories should be aware that, if a timely protest is filed, DEF's standard offer contract may subsequently be revised.



SECTION No. IX  
SECOND REVISED SHEET NO. 9.400  
CANCELS FIRST REVISED SHEET NO. 9.400

STANDARD OFFER CONTRACT FOR THE PURCHASE OF FIRM CAPACITY  
AND ENERGY FROM A RENEWABLE ENERGY PRODUCER  
OR QUALIFYING FACILITY LESS THAN 100 KW

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ISSUED BY: Javier Portuondo, Director, Rates & Regulatory Strategy - FL  
EFFECTIVE: April 29, 2013





SECTION NO. IX  
~~FIRST-SECOND~~ REVISED SHEET NO. 9.401  
CANCELS ~~ORIGINAL-FIRST~~ SHEET NO. 9.401

STANDARD OFFER CONTRACT FOR THE PURCHASE OF FIRM CAPACITY  
AND ENERGY FROM A RENEWABLE ENERGY PRODUCER  
OR QUALIFYING FACILITY LESS THAN 100 KW

between

\_\_\_\_\_

and

|

DUKE ENERGY FLORIDA, LLC

| ISSUED BY: Javier Portuondo, Managing Director, Rates & Regulatory Strategy - FL  
EFFECTIVE: April 29, 2013



SECTION NO. IX  
SECOND REVISED SHEET NO.9.402  
CANCELS FIRST REVISED SHEET NO. 9.402

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ISSUED BY: Javier Portuondo, Director, Rates & Regulatory Strategy - FL  
EFFECTIVE: April 29, 2013



SECTION NO. IX  
FOURTH REVISED SHEET NO. 9.403  
CANCELS THIRD REVISED SHEET NO. 9.403

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ISSUED BY: Javier Portuondo, Director, Rates & Regulatory Strategy - FL  
EFFECTIVE: July 10, 2014



SECTION NO. IX  
~~FOURTH~~ FIFTH REVISED SHEET NO. 9.404  
CANCELS ~~THIRD~~ FOURTH REVISED SHEET NO.  
9.404

**STANDARD OFFER CONTRACT FOR THE PURCHASE OF FIRM CAPACITY  
AND ENERGY FROM A RENEWABLE ENERGY PRODUCER  
OR QUALIFYING FACILITY LESS THAN 100 KW**

THIS STANDARD OFFER CONTRACT FOR THE PURCHASE OF FIRM CAPACITY AND ENERGY (hereinafter referred to as the "Contract") is made and entered this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_ (hereinafter referred to as the "Execution Date"), by and between \_\_\_\_\_ (hereinafter the Renewable Energy Provider/Qualifying Facility ("RF/QF")), and Duke Energy Florida, ~~LLC~~ d/b/a Duke Energy (hereinafter "DEF"), a private utility corporation organized and existing under the laws of the State of Florida. The RF/QF and DEF shall be individually identified herein as the "Party" and collectively as the "Parties". This Contract contains six Appendices which are incorporated into and made part of this Contract: Appendix A: Monthly Capacity Payment Calculation; Appendix B: Termination Fee; Appendix C: Detailed Project Information; Appendix D: Rate Schedule COG-2; Appendix E: Agreed Upon Payment Schedules and Other Mutual Agreements; and Appendix F: 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 DEF desires to purchase electricity to be generated by the RF/QF consistent with Florida Statutes 366.91 (2006) and FPSC Rules 25-17.080 through 25-17.310 F.A.C.; 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 DEF. The Parties recognize that the Transmission Provider may be DEF and that the transmission service will be provided under a separate agreement; and

**WHEREAS**, the FPSC has approved this Contract for the Purchase of Firm Capacity and Energy from a Renewable Energy Producer; and

**WHEREAS**, the RF/QF guarantees that the Facility is capable of delivering firm capacity and energy to DEF 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:

ISSUED BY: Javier Portuondo, Managing Director, Rates & Regulatory Strategy - FL  
EFFECTIVE: July-13, 2017



SECTION NO. IX  
SECOND REVISED SHEET NO. 9.405  
CANCELS FIRST REVISED SHEET NO. 9.405

**1. Definitions**

"AFR" means the Facility's annual fuel requirement.

"AFTR" means the Facility's annual fuel transportation requirement

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

"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 Monthly Capacity Payment Calculation.

"Appendix B" sets forth the Termination Fee.

"Appendix C" sets forth the Detailed Project Information.

"Appendix D" sets forth Rate Schedule COG-2.

"Appendix E" sets forth the Agreed Upon Payment Schedules and Other Mutual Agreements

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

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

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

"Avoided Unit" means the electrical generating unit described in Section 4 upon which this Contract is based.

"Avoided Unit Energy Cost" has the meaning assigned to it in Appendix D.

"Avoided Unit Fuel Cost" has the meaning assigned to it in Appendix D.

"Avoided Unit Heat Rate" means the average annual heat rate of the Avoided Unit as defined in Section 4.

"Avoided Unit In-Service Date" means the date upon which the Avoided Unit would have started commercial operation as specified in Section 4.

"Avoided Unit Life" means the economic life of the Avoided Unit.

"Avoided Unit Variable O&M" means the Avoided Unit variable operation and maintenance expenses as defined in Section 4. The annual escalation will begin in the payment for January deliveries.

ISSUED BY: Javier Portuondo, Director, Rates & Regulatory Strategy - FL  
EFFECTIVE: April 29, 2013





SECTION No. IX  
FIFTH REVISED SHEET NO. 9.406  
CANCELS FOURTH REVISED SHEET NO. 9.406

"Base Capacity Payment" or "BCP" means capacity payment rates defined in Appendix D and further defined by the selection of Option A,B,C or D in Section 9.2 or in Appendix E if applicable.

"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 Delivery Date" means the first calendar day immediately following the date of the Facility's successful completion of the first Committed Capacity Test.

"Capacity Payment" means the payment defined in Section 9.2 and Appendix A.

"Committed Capacity" or "CC" means the capacity in kW that the RF/QF commits to sell to DEF; the amount of which shall be determined in accordance with Section 7 and shall be greater than zero.

"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 including Qualifying Facility status. 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 standard offer contract for the purchase of Firm Capacity and Energy from a Renewable Energy Producer or Qualifying Facility with a nameplate capacity of less than 100 kW.

"Credit Support Provider" means any Person that has provided an RF/QF Guarantee in connection with this Agreement.

ISSUED BY: Javier Portuondo, Director, Rates & Regulatory Strategy - FL  
EFFECTIVE: July 13, 2017



SECTION No. IX  
FOURTH REVISED SHEET NO. 9.407  
CANCELS THIRD REVISED SHEET NO. 9.407

"Creditworthy" with respect to a Party or its Credit Support Provider, as applicable, means a party is rated at least BBB by Standard & Poor's (S&P), or at least Baa3 by Moody's Investor Services (Moody's). Rating shall be the unsecured, senior long-term debt rating (not supported by third party credit enhancement) or the issuer rating will be used if not available. If a Party or its Credit Support Provider, as applicable, is rated by both S&P and Moody's, then the lower of the two ratings will apply.

"DEF" has the meaning assigned to it in the opening paragraph of this Contract.

"DEF Entities" has the meaning assigned to it in Section 16.

"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 20.9.

"Drop Dead Date" means the date which is twelve (12) months following the Execution Date except for the condition defined in Section 5(a)(i). The Parties recognize that firm transmission service agreements can take up to 24 months to obtain so for Section 5(a)(i) only the 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 System other than DEF's, DEF's interconnection with the Transmission Provider's Transmission System, or such other physical point on which RF/QF and DEF may agree.

ISSUED BY: Javier Portuondo, Director, Rates & Regulatory Strategy - FL  
EFFECTIVE: June 9, 2016





SECTION No. IX  
FIFTH REVISED SHEET NO. 9.408  
CANCELS FOURTH REVISED SHEET NO. 9.408

"Eligible Collateral" means (i) a Letter of Credit from a Qualified Institution or (ii) cash deposit provided to DEF by RF/QF or a combination of (i), and/or (ii) 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" or "EA" 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, renewable energy 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.

"Exemplary Early Capacity Payment Date" means the exemplary date used to calculate Capacity Payments for Option B and D. This date is specified in Section 4. The actual Capacity Payments for Option B and D will be calculated based upon the Required Capacity Delivery Date.

"Expiration Date" means the final date upon which this Contract can be executed. This date is specified in Section 4.

"Facility" means all 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. In the case of a cogenerator the Facility includes all equipment that is owned or controlled by the RF/QF to produce useful thermal energy through the sequential use of energy.

ISSUED BY: Javier Portuondo, Director, Rates & Regulatory Strategy - FL  
EFFECTIVE: July 13, 2017





SECTION No. IX  
SECOND REVISED SHEET NO. 9.409  
CANCELS FIRST REVISED SHEET NO. 9.409

"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).

"Firm Capacity and Energy" has the meaning assigned to it in Appendix D.

"Firm Capacity Rate" has the meaning assigned to it in Appendix D.

"Firm Energy Rate" has the meaning assigned to it in Appendix D.

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

"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.



SECTION No. IX  
FOURTH REVISED SHEET NO. 9.410  
CANCELS THIRD REVISED SHEET NO 9.410

“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 B.

“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 DEF whose approval may not be unreasonably withheld. The Letter of Credit must provide that DEF has the right to draw on the Letter of Credit in the event that less than twenty (20) Business Days remain until its expiration and RF/QF has failed to renew the Letter of Credit or provide replacement Eligible Collateral as required under this Agreement.

“LOI” means a letter of intent for fuel supply.

“MCPC” means the Monthly Capacity Payment for Option A.

“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.

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

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

“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.

ISSUED BY: Javier Portuondo, Director, Rates & Regulatory Strategy - FL  
EFFECTIVE: June 9, 2016



SECTION No. IX  
SECOND REVISED SHEET NO. 9.411  
CANCELS FIRST REVISED SHEET NO. 9.411

"Option A" means normal Capacity Payments as described in Appendix D.

"Option B" means early Capacity Payments as described in Appendix D.

"Option C" means levelized Capacity Payments as described in Appendix D.

"Option D" means early levelized Capacity Payments as described in Appendix D.

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

"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.

ISSUED BY: Javier Portuondo, Director, Rates & Regulatory Strategy - FL  
EFFECTIVE: July 21, 2015





SECTION No. IX  
FOURTH REVISED SHEET NO. 9.412  
CANCELS THIRD REVISED SHEET NO. 9.412

"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 EPAct 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 the United States branch of a foreign bank having total assets of at least ten billion dollars (\$10,000,000,000) (which is not an affiliate of either party) and a general long-term senior unsecured debt rating of A- or higher (as rated by Standard & Poor's Ratings Group), or A3 or higher (as rated by Moody's Investor Services).

"Rate Schedule COG-1" means DEF'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 B.

"Remedial Action Plan" has the meaning assigned to it in Section 20.3.

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

"Required Capacity Deliver Date" means the date specified in Appendix E. In the event that no Required Capacity Delivery Date is specified in Appendix E then the RF/QF shall achieve the Capacity Delivery Date on or before the Avoided Unit In-Service Date

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

ISSUED BY: Javier Portuondo, Director, Rates & Regulatory Strategy - FL  
EFFECTIVE: July 13, 2017



SECTION No. IX  
THIRD REVISED SHEET NO. 9.413  
CANCELS SECOND REVISED SHEET NO. 9.413

"RF/QF Insurance" has the meaning assigned to it in Section 17.

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

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

"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 4.

"Termination Fee" means the fee described in Appendix B as it applies to any Capacity Payments made under Option B, C or D.

"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 DEF, 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.

ISSUED BY: Javier Portuondo, Director, Rates & Regulatory Strategy - FL  
EFFECTIVE: July 21, 2015



SECTION No. IX  
SECOND REVISED SHEET NO. 9.414  
CANCELS FIRST REVISED SHEET NO. 9.414

**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:
Generator Type (Induction or Synchronous)	
Technology	
Fuel Type and Source	
Generator Rating (KVA)	
Maximum Capability (kW)	
Net Output (kW)	
Power Factor (%)	
Operating Voltage (kV)	
Peak Internal Load kW	

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 DEF informed of any material changes in its business which affects its Renewable Facility or Qualifying Facility status. DEF 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 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 DEF's system, DEF 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 DEF 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.

ISSUED BY: Javier Portuondo, Director, Rates & Regulatory Strategy - FL  
EFFECTIVE: April 29, 2013





SECTION No. IX  
~~ELEVENTH-TWELFTH~~ REVISED SHEET NO. 9.415  
CANCELS ~~TENTH-ELEVENTH~~ SHEET NO. 9.415

### 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 the Termination Date, (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 the Required Capacity Delivery Date (or such later date as may be permitted by DEF pursuant to Section 7), this Contract shall be rendered null and void and DEF's 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 Combustion Turbine
Avoided Unit Capacity	226 <del>8</del> MW
Avoided Unit In-Service Date	June 1, 2027 <del>4</del>
Avoided Unit Heat Rate	10,905 <del>672</del> BTU/kWh
Avoided Unit Variable O&M	0.093 <del>51</del> ¢ per kWh in mid-2018 <del>7</del> dollars escalating annually at 2.50%
Avoided Unit Life	35 years
Capacity Payments begin	Avoided Unit In-Service Date unless Option B, or D is selected or amended in Appendix E
Termination Date	May 31, 2037 <del>4</del> (10 years) unless amended in Appendix E
Minimum Performance Standards – On Peak Availability Factor*	95%
Minimum Performance Standards – Off Peak Availability Factor	95%
Minimum Availability Factor Required to qualify for a Capacity payment	75%
Expiration Date	April 1, 2019 <del>8</del>
Completed Permits Date	June 1, 2025 <del>2</del>
Exemplary Early Capacity Payment Date	January 1, 2025 <del>2</del>

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

ISSUED BY: Javier Portuondo, Managing Director, Rates & Regulatory Strategy - FL  
EFFECTIVE: July 13, 2017



SECTION No. IX  
SEVENTH REVISED SHEET NO. 9.416  
CANCELS SIXTH REVISED SHEET NO. 9.416

**5. Conditions Precedent**

- (a) Unless otherwise waived in writing by DEF, 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 shall have obtained Qualifying Facility status from either the FPSC or FERC. The RF/QF shall provide the Duke Energy Florida Director of Qualified Facility Contracts a copy of the certification of QF status filing and any re-filings required to reflect subsequent changes to the previously certified Facility.
- (b) Promptly upon satisfaction of the Conditions Precedent to be satisfied, the Party having satisfied the same shall deliver to the other Party a certificate evidencing such satisfaction. DEF may waive the satisfaction of a Condition Precedent at its sole discretion. Such waiver must be made in writing. 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 the Required Capacity Delivery Date.

ISSUED BY: Javier Portuondo, Director, Rates & Regulatory Strategy - FL  
EFFECTIVE: July 13, 2017





SECTION No. IX  
FOURTH REVISED SHEET NO.9.417  
CANCELS THIRD REVISED SHEET NO. 9.417

- (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 DEF and DEF 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 be changed at the option of the RF/QF, subject to the provisions of Appendix D.
  - 6.2** Ownership and Offering For Sale Of Renewable Energy Attributes  
  
Subject to Section 6.3, 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.
  - 6.3** In the event that the RF/QF decides to sell any or all EAs that result from the electric generation of the RF/QF during the term of this Contract, the RF/QF shall provide notice to the Company of its intent to sell such EAs and provide the Company a reasonable opportunity to offer to purchase such EAs.
  - 6.4** The RF/QF shall not rely on interruptible or curtailable standby service for the start up requirements (initial or otherwise) of the Facility.
  - 6.5** 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 DEF. 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 DEF. 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 DEF. The Parties recognize that the Transmission Provider may be DEF and that if DEF is the Transmission Provider, the transmission service will be provided under a separate agreement.

ISSUED BY: Javier Portuondo, Director, Rates & Regulatory Strategy - FL  
EFFECTIVE: July 13, 2017



SECTION No. IX  
SIXTH REVISED SHEET NO. 9.418  
CANCELS FIFTH REVISED SHEET NO. 9.418

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

- 7.1 If the RF/QF commits to sell capacity to DEF, the amount of which shall be determined in accordance with this Section 7. Subject to Section 7.3, the Committed Capacity is set at \_\_\_\_\_ kW, with an expected Capacity Delivery Date on or before the Required Capacity Delivery Date.
- 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 Required Capacity Delivery Date and testing must be completed before the Avoided Unit In-Service Date or an earlier date in Appendix E. 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, DEF 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 DEF 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.

ISSUED BY: Javier Portuondo, Director, Rates & Regulatory Strategy - FL  
EFFECTIVE: July 13, 2017





SECTION No. IX  
SEVENTH REVISED SHEET NO. 9.419  
CANCELS SIXTH REVISED SHEET NO. 9.419

- 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 DEF, which consent shall be granted in DEF's sole discretion.
- 7.5 Unless Option B or D as contained in Appendix D or Appendix E is chosen by RF/QF, DEF shall make no Capacity Payments to the RF/QF prior to the Avoided Unit In-Service Date.
- 7.6 The RF/QF shall be entitled to receive Capacity Payments beginning on the Capacity Delivery Date, provided the Capacity Delivery Date occurs before the Required Capacity Delivery Date (or such later date permitted by DEF). If the Capacity Delivery Date does not occur before the Required Capacity Delivery Date, DEF 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 DEF 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 DEF under any of the provisions of this Contract. DEF 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 DEF pursuant to Section 7.3; provided, however, that the Committed Capacity Test Period may commence earlier than such time in the event that DEF 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 hourly net output in kW (generator output minus auxiliary) measured over the Committed Capacity Test Period.

ISSUED BY: Javier Portuondo, Director, Rates & Regulatory Strategy - FL  
EFFECTIVE: July 13, 2017



SECTION No. IX  
FIFTH REVISED SHEET NO. 9.420  
CANCELS FOURTH REVISED SHEET NO. 9.420

- 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 DEF 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 DEF agrees to pay the RF/QF for energy produced by the Facility and delivered to DEF in accordance with the rates and procedures contained in Appendix D, as it may be amended from time to time. The Parties agree that this Contract shall be subject to all of the provisions contained in Rate Schedule COG-1 or Appendix D whichever applies as approved and on file with the FPSC.
- 9.1.2 DEF 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 DEF 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 Appendix A hereto.

**9.2 Capacity**

DEF agrees to pay the RF/QF for the Capacity described in Section 7 in accordance with the rates and procedures contained in Appendix D, as it may be amended and approved from time to time by the FPSC, and pursuant to the election of Option \_\_\_\_\_ of Appendix D or an alternative rate schedule in Appendix E. The RF/QF understands and agrees that Capacity Payments will only be made if the Capacity Delivery Date occurs before the Required Capacity Delivery Date and the Facility is delivering firm Capacity and Energy to DEF. Once so selected, this Option, the Firm Capacity Rate and/or the Firm Energy Rate cannot be changed for the term of this Contract.

ISSUED BY: Javier Portuondo, Director, Rates & Regulatory Strategy - FL  
EFFECTIVE: July 13, 2017





SECTION No. IX  
FOURTH REVISED SHEET NO. 9.421  
CANCELS THIRD REVISED SHEET NO. 9.421

### **9.3 Payments for Energy and Capacity**

- 9.3.1** 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.
- 9.3.2** 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.

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

- 10.1** No later than sixty (60) calendar days prior to the Required 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 DEF in writing a good-faith estimate of the amount of electricity to be generated by the Facility and delivered to DEF for each month of the following calendar year, including the time, duration and magnitude of any scheduled maintenance period(s) or reductions in Capacity. The 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, DEF shall notify the RF/QF in writing whether the requested scheduled maintenance periods in the detailed plan are acceptable. If DEF does not accept any of the requested scheduled maintenance periods, DEF 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 DEF, 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 twenty four 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 DEF regarding day-to-day and hour-by-hour communication between the Parties relative to electricity production and maintenance scheduling.

ISSUED BY: Javier Portuondo, Director, Rates & Regulatory Strategy - FL  
EFFECTIVE: July 10, 2014



SECTION No. IX  
FIFTH REVISED SHEET No. 9.422  
CANCELS FOURTH REVISED SHEET NO. 9.422

- 10.4** The Parties recognize that the intent of the availability factor in Section 4 of 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 DEF 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 DEF 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 DEF 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 no event shall the RF/QF deliver any portion of their electrical output to a third party.

**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 \_\_\_\_\_ volts (\_\_\_\_\_ 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 DEF.

- 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, DEF'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 utility 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 DEF in writing prior to returning the equipment to service. The specifics of the unit functional trip test will be consistent with Prudent Utility Practices.



SECTION No. IX  
SEVENTH REVISED SHEET NO. 9.423  
CANCELS SIXTH REVISED SHEET NO. 9.423

- 10.5.3** If the Facility is separated from the DEF system for any reason, under no circumstances shall the RF/QF reconnect the Facility to DEF's system without first obtaining DEF'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 DEF. 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** DEF 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 DEF 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 DEF's request, the RF/QF shall demonstrate this capability to DEF'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** Simultaneous with the execution of this Contract RF/QF shall deliver to DEF Eligible Collateral in an amount equal to \$30.00/kw of Committed Capacity as Completion/Performance Security.

ISSUED BY: Javier Portuondo, Director, Rates & Regulatory Strategy - FL  
EFFECTIVE: July 10, 2014





SECTION No. IX  
EIGHTH REVISED SHEET NO. 9.424  
CANCELS SEVENTH REVISED SHEET NO. 9.424

- 11.2 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, DEF shall promptly release the Eligible Collateral that has been replaced by the substitute Eligible Collateral. Following any termination of this Contract, the Parties shall mutually agree to a final settlement of all obligations under this Contract which such period shall not exceed 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 DEF 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 20.9.
- 11.3 Draws, Replenishment - DEF may draw upon Eligible Collateral provided by the RF/QF following the occurrence of an Event of Default or pursuant to the other provisions of this Contract in order to recover any damages to which DEF 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 five (5) Business Days replenish the Eligible Collateral to the full amounts required.

ISSUED BY: Javier Portuondo, Director, Rates & Regulatory Strategy - FL  
EFFECTIVE: July 13, 2017



SECTION No. IX  
SIXTH REVISED SHEET NO. 9.425  
CANCELS FIFTH REVISED SHEET NO. 9.425

- 11.4 In the event that the (a) Capacity Delivery Date occurs before the Required Capacity Delivery Date and (b) the ACBF is equal to or greater than 95% for the first twelve (12) months following the Capacity Delivery Date then DEF will return the Completion/Performance Security to the RF/QF within ninety (90) days of the first anniversary of the Capacity Delivery Date. In the event that the Capacity Delivery Date does not occur before the Required Capacity Delivery Date then DEF shall immediately be entitled to draw down the Completion/Performance Security in full. In the event that the ACBF is less than 95% for any of the first twelve (12) months following the Capacity Delivery Date then DEF shall be entitled to draw upon the Completion/Security until the ACBF is equal to or greater than 95% for 12 consecutive months. Upon the completion of twelve (12) consecutive months with the ACBF greater than or equal to 95% then DEF will return the Completion/Performance Security within ninety (90) days.
- 11.5 Reporting - RF/QF shall promptly notify DEF of any circumstance that results in RF/QF's failure to be in compliance with the RF/QF Performance Security Requirements of this Section 11. From time to time, at DEF's written request, RF/QF shall provide DEF with such evidence as DEF may reasonably request, that RF/QF Letter of Credit or Security Account is in full compliance with this Contract.

## **12. Termination Fee and Security**

- 12.1 In the event that the RF/QF receives Capacity Payments pursuant to Option B, Option C, or Option D of Appendix D or any Capacity Payment schedule in Appendix E that differs from a Normal Capacity Payment Rate as calculated in FPSC Rule 25-17.0832(6)(a), then upon the termination of this Contract, the RF/QF shall owe and be liable to DEF for the Termination Fee. The RF/QF's obligation to pay the Termination Fee shall survive the termination of this Contract. DEF 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, standby letter(s) of credit issued by a Qualified Institution in form and substance acceptable to DEF (including provisions (a) permitting partial and full draws and (b) permitting DEF to draw upon such Letter of Credit, in full, if such Letter of Credit is not renewed or replaced at least twenty (20) Business Days prior to its expiration date); (ii) a bond issued to DEF by a financially sound company in form and substance acceptable to DEF in its sole discretion; or (iii) a cash deposit with DEF (any of (i), (ii), or (iii), the "Termination Security").

ISSUED BY: Javier Portuondo, Director, Rates & Regulatory Strategy - FL  
EFFECTIVE: July 13, 2017



SECTION No. IX  
THIRD REVISED SHEET NO. 9.426  
CANCELS SECOND REVISED SHEET NO. 9.426

**12.1.2** DEF 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 the extent that they fail to meet the requirements of a Qualified Institution, DEF may require the RF/QF to replace the letter(s) of credit or the bond, as applicable. In the event that DEF 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 Qualified Institution, 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 DEF 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 DEF's issuance of the Termination Fee calculation as described in Section 12.1, the RF/QF must provide DEF, within ten calendar (10) days, written assurance and documentation (the "Security Documentation"), in form and substance acceptable to DEF, that the amount of the Termination Security is sufficient to cover the balance of the Termination Fee through the end of the following quarter. In addition to the foregoing, at any time during the term of this Contract, DEF 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 DEF 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 Required Capacity Delivery Date, DEF 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. Performance Factor**

DEF desires to provide an incentive to the RF/QF to operate the Facility during on-peak and off-peak periods in a manner that approximates the projected performance of the Avoided Unit. A formula to achieve this objective is attached as Appendix A.

ISSUED BY: Javier Portuondo, Director, Rates & Regulatory Strategy - FL  
EFFECTIVE: July 21, 2015





SECTION No. IX  
SIXTH REVISED SHEET NO. 9.427  
CANCELS FIFTH REVISED SHEET NO. 9.427

#### 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 DEF;
- (b) after the Capacity Delivery Date, the Facility fails for twelve (12) consecutive months to maintain an Annual Capacity Billing Factor, as described in Appendix A, of at least seventy five percent (75%);
- (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 Contract 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 DEF, 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 11 hereof;
- (i) any of the representations or warranties, including the certification of the completion of the Conditions Precedent, made by either Party in this Contract is false or misleading in any material respect as of the time made;

ISSUED BY: Javier Portuondo, Director, Rates & Regulatory Strategy - FL  
EFFECTIVE: June 9, 2016



SECTION No. IX  
FIFTH REVISED SHEET NO. 9.428  
CANCELS FOURTH REVISED SHEET NO. 9.428

- (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;
- (l) the RF/QF fails to maintain its status as a Qualifying Facility.
- (m) the RF/QF sells any energy or firm capacity to an entity other than DEF.

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

- 15.1** Upon the occurrence of any of the Events of Default in Section 14, the DEF 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 RF/QF, and offset against any payment(s) due from DEF to the RF/QF, any monies otherwise due from the RF/QF to DEF;
  - 15.1.2** enforce the provisions of the Completion/Performance Security pursuant to Section 11 and/or the Termination Security requirement pursuant to Section 12 hereof, as applicable; and
  - 15.1.3** exercise any other remedy(ies) which may be available to DEF 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** DEF and the RF/QF shall each be responsible for its own facilities. DEF and the RF/QF shall each be responsible for ensuring adequate safeguards for other DEF customers, DEF'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, "DEF 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:

ISSUED BY: Javier Portuondo, Director, Rates & Regulatory Strategy - FL  
EFFECTIVE: July 13, 2017





SECTION No. IX  
~~SECOND-THIRD~~ REVISED SHEET NO. 9.429  
CANCELS ~~SECOND FIRST~~-REVISED SHEET NO.  
9.429

- (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 Contract.

## 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 in the state of Florida on a standard "Insurance Services Office" commercial general liability and/or excess liability form or equivalent and Workers' Compensation in accordance with the statutory requirements of the state of Florida (such policy or policies, collectively, the "RF/QF Insurance"). A certificate of insurance shall be delivered to DEF 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) premises and operations liability, (c) 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. Without limiting the foregoing, the RF/QF Insurance must be reasonably acceptable to DEF. Any premium assessment or deductible shall be for the account of the RF/QF and not DEF.

ISSUED BY: Javier Portuondo, Managing Director, Rates & Regulatory Strategy - FL  
EFFECTIVE: July 10, 2014



SECTION No. IX  
FOURTH REVISED SHEET NO. 9.430  
CANCELS THIRD REVISED SHEET NO. 9.430

- 17.2 The RF/QF Insurance for liability shall have a minimum limit of five million dollars (\$5,000,000.00) per occurrence for bodily injury (including death) or property damage. This liability limit can be met by any combination of commercial general and excess liability insurance policies.
- 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 an earlier date. 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 shall provide DEF 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 DEF shall be designated as an additional named insured under the RF/QF Insurance (except Workers' Compensation). The RF/QF Insurance shall be primary to any coverage maintained by DEF and provide, where permitted by law, waiver of any rights of subrogation against DEF. Any deductibles or retentions shall be the sole responsibility of RF/QF. RF/QF's compliance with these provisions and the limits of insurance specified herein shall not constitute a limitation of RF/QF's liability or otherwise affect RF/QF's indemnification obligations pursuant to this Contract. Any failure to comply with all of these provisions shall not be deemed a waiver of any rights of DEF under this Contract with respect to any insurance coverage required hereunder. DEF may request the RF/QF to provide a copy of any or all of its required insurance policies, including endorsements in which DEF is included as an additional insured for any claims filed relative to this Contract.

ISSUED BY: Javier Portuondo, Director, Rates & Regulatory Strategy - FL  
EFFECTIVE: July 13, 2017





SECTION No. IX  
~~THIRD~~ ~~FOURTH~~ REVISED SHEET NO. 9.431  
CANCELS ~~SECOND~~ ~~THIRD~~ REVISED SHEET NO.  
9.431

**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 Contract. 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 DEF's markets; (ii) DEF's economic inability to use or resell the Capacity and Energy purchased hereunder; or (iii) RF/QF's ability 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 Contract.

**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.

ISSUED BY: Javier Portuondo, Managing Director, Rates & Regulatory Strategy - FL  
EFFECTIVE: July 10, 2014





SECTION No. IX  
THIRD REVISED SHEET NO. 9.432  
CANCELS SECOND REVISED SHEET NO. 9.432

- 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 DEF temporarily adjust the Committed Capacity as provided in Sections 18.6 and 18.7. Such adjustment shall be effective the first calendar day immediately following DEF'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, DEF shall have no obligation to make Capacity Payments hereunder.
- 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, DEF 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 DEF 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 18.5 all Monthly Capacity Payments shall reflect, pro rata, the reduction in Committed Capacity, and the Monthly Capacity Payments will continue to be calculated in accordance with the pay-for-performance provisions in Appendix A.

ISSUED BY: Javier Portuondo, Director, Rates & Regulatory Strategy - FL  
EFFECTIVE: July 13, 2017



SECTION No. IX  
SECOND REVISED SHEET NO. 9.433  
CANCELS FIRST REVISED SHEET NO. 9.433

**18.10** The RF/QF agrees to be responsible for and pay the costs necessary to reactivate the Facility and/or the interconnection with DEF'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 DEF. DEF agrees to reactivate, at its own cost, the interconnection with the Facility in circumstances where any interruptions to such interconnections are caused by DEF 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**

DEF 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 \_\_\_\_\_ (corporation, partnership, or other, as applicable) duly organized and validly existing in good standing under the laws of \_\_\_\_\_ 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 DEF or of the \_\_\_\_\_ (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 DEF or the \_\_\_\_\_ (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.

ISSUED BY: Javier Portuondo, Director, Rates & Regulatory Strategy - FL  
EFFECTIVE: April 29, 2013





SECTION No. IX  
SECOND REVISED SHEET NO. 9.434  
CANCELS FIRST REVISED SHEET NO. 9.434

#### **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.

ISSUED BY: Javier Portuondo, Director, Rates & Regulatory Strategy - FL  
EFFECTIVE: April 29, 2013



SECTION No. IX  
FOURTH REVISED SHEET NO. 9.435  
CANCELS THIRD REVISED SHEET NO. 9.435

**20. General Provisions**

**20.1 Project Viability**

To assist DEF in assessing the RF/QF's financial and technical viability, the RF/QF shall provide the information and documents requested in Appendix C or substantially similar documents, to the extent the documents apply to the type of Facility covered by this Contract and to the extent the documents are available. All documents to be considered by DEF must be submitted at the time this Contract is presented to DEF. Failure to provide the following such documents may result in a determination of non-viability by DEF.

**20.2 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.

**20.3 Project Management**

If requested by DEF, the RF/QF shall submit to DEF its integrated project schedule for DEF'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. The RF/QF shall submit monthly progress reports in a form satisfactory to DEF within fifteen (15) calendar days after the close of each month from the first month following the Effective Date until the Capacity Delivery Date. The RF/QF shall notify DEF of any changes in such schedules within ten (10) calendar days after such changes are determined. If for any reason, DEF has reason to believe that RF/QF may fail to achieve the Capacity Delivery Date, then, upon DEF's request, RF/QF shall submit to DEF, within ten (10) business days of such request, a remedial action plan ("Remedial Action Plan") that sets forth a detailed description of RF/QF's proposed course of action to promptly achieve the Capacity Delivery Date. Delivery of a Remedial Action Plan does not relieve RF/QF of its obligation to the Capacity Delivery Date. DEF shall have the right to monitor the construction, start-up and testing of the Facility, either on-site or off-site. DEF'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.

ISSUED BY: Javier Portuondo, Director, Rates & Regulatory Strategy - FL  
EFFECTIVE: July 13, 2017



SECTION No. IX  
~~THIRD-FOURTH~~ REVISED SHEET NO. 9.436  
CANCELS ~~SECOND-THIRD~~ REVISED SHEET NO.  
9.436

The RF/QF shall provide DEF 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 DEF no later than one hundred eighty (180) calendar days prior to the initial synchronization date.

#### 20.4 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.

The RF/QF shall be responsible for DEF's reasonable costs and expenses associated with the review, negotiation, execution and delivery of any such documents or information pursuant to such collateral assignment, including reasonable attorney's fees.

#### 20.5 Disclaimer

In executing this Contract, DEF 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.

#### 20.6 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:

For DEF:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ Duke Energy Florida, LLC  
Cogeneration-Manager Director of QF  
Contracts DEF 155  
299 First Avenue North  
St. Petersburg, FL 33701

ISSUED BY: Javier Portuondo, Managing Director, Rates & Regulatory Strategy - FL  
EFFECTIVE: July-13, 2017





SECTION No. IX  
~~SECOND-THIRD~~ REVISED SHEET NO. 9.437  
CANCELS ~~FIRST-SECOND~~ REVISED SHEET NO.  
9.437

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:

Duke Energy Florida, LLC  
d/b/a Duke Energy  
299 First Avenue North  
St. Petersburg, FL 33701

Attention: Director of QF Contracts ~~Cogeneration Manager~~ DEF

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**20.7 Applicable Law**

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

**20.8 Taxation**

The RF/QF shall hold DEF and its general body of ratepayers harmless from the effects of any additional taxes, assessments or other impositions that arise as a result of the purchase of energy and capacity from the RF/QF in lieu of other energy and capacity. Any savings in regards to taxes or assessments shall be included in the avoided cost payments made to the RF/QF to the extent permitted by law. In the event DEF becomes liable for additional taxes, assessments or impositions arising out of its transactions with the RF/QF under this tariff schedule or any related interconnection agreement or due to changes in laws affecting DEF's purchases of energy and capacity from the RF/QF occurring after the execution of an agreement under this tariff schedule and for which DEF would not have been liable if it had produced the energy and/or constructed facilities sufficient to provide the capacity contemplated under such agreement itself, DEF may bill the RF/QF monthly for such additional expenses or may offset them against amounts due to the RF/QF from DEF. Any savings in taxes, assessments or impositions that accrue to DEF as a result of its purchase of energy and capacity under this tariff schedule that are not already reflected in the avoided energy or avoided capacity payments made to the RF/QF hereunder, shall be passed on to the RF/QF to the extent permitted by law without consequential penalty or loss of such benefit to DEF.

ISSUED BY: Javier Portuondo, Managing Director, Rates & Regulatory Strategy - FL  
EFFECTIVE: ~~July-13, 2017~~



SECTION No. IX  
THIRD REVISED SHEET NO. 9.438  
CANCELS SECOND REVISED SHEET NO. 9.438

## **20.9 Resolution of Disputes**

### **20.9.1 Notice of Dispute**

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

### **20.9.2 Resolution by Parties**

Upon receipt of a written notice claiming a Dispute, executives of both Parties shall meet at a mutually agreeable time and place within ten (10) business days after delivery of such notice and thereafter as often as they reasonably deem necessary, to exchange relevant information and to attempt to resolve the Dispute. In such meetings and exchanges, a Party shall have the right to designate as confidential any information that such Party offers. No confidential information 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) calendar 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.

## **20.10 Limitation of Liability**

**IN NO EVENT SHALL DEF, 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.**

ISSUED BY: Javier Portuondo, Director, Rates & Regulatory Strategy - FL  
EFFECTIVE: July 13, 2017



SECTION No. IX  
THIRD REVISED SHEET NO. 9.439  
CANCELS SECOND REVISED SHEET NO. 9.439

**20.11 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.

**20.12 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.

**20.13 Survival of Contract**

Subject to the requirements of Section 20.4, 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.

**20.14 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.

**20.15 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.

**20.16 Set-Off**

DEF 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.

ISSUED BY: Javier Portuondo, Director, Rates & Regulatory Strategy - FL  
EFFECTIVE: July 13, 2017





SECTION No. IX  
FIFTH REVISED SHEET NO. 9.440  
CANCELS FOURTH REVISED SHEET NO. 9.440

**20.17 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 20.17(c) below, the Party affected by such change(s) may avail itself of the remedy set forth in Section 20.17(d) below as its sole and exclusive remedy.
- (c) The Parties recognize and agree that certain Change(s) in Environmental Law or Other Regulatory Requirements may occur that do not rise to a level that the Parties desire to impact this Contract. Accordingly, the Parties agree that for the purposes of this Contract, such change(s) will not be deemed to have occurred unless the change in Avoided Cost resulting from such change(s) exceed a mutually agreed upon amount. This mutually agreed upon amount is attached to this Contract in Appendix E.
- (d) If an Avoided Unit Cost Change meets the threshold set forth in Section 20.17(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, subject to the approval of the FPSC. Any dispute regarding the application of this Section 20.17 shall be resolved in accordance with Section 20.9.

**20.18 Provision of Information.**

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.

ISSUED BY: Javier Portuondo, Director, Rates & Regulatory Strategy - FL  
EFFECTIVE: July 13, 2017



SECTION No. IX  
THIRD REVISED SHEET NO. 9.441  
CANCELS SECOND REVISED SHEET NO. 9.441

IN WITNESS WHEREOF, the RF/QF has executed this Contract on the date set forth below.

RF/QF

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

IN WITNESS WHEREOF, DEF has acknowledged receipt of this executed Contract.

DUKE ENERGY FLORIDA, LLC.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

ISSUED BY: Javier Portuondo, Director, Rates & Regulatory Strategy - FL  
EFFECTIVE: July 13, 2017





SECTION No. IX  
~~SEVENTH EIGHTH~~ REVISED SHEET NO. 9.442  
CANCELS ~~SIXTH SEVENTH~~ REVISED SHEET NO.  
9.442

## APPENDIX A

TO

**DUKE ENERGY FLORIDA, LLC**  
**RENEWABLE OR QUALIFYING FACILITY LESS THAN 100 KW**  
**STANDARD OFFER CONTRACT**

### MONTHLY CAPACITY PAYMENT CALCULATION

Capitalized terms not otherwise defined herein have the meaning ascribed to them in the Standard Offer Contract for the Purchase of Firm Capacity and Energy from a Renewable Energy Producer or a Qualifying Facility less than 100 kW.

- A. In the event that the ACBF is less than or equal to 75%, then no Monthly Capacity Payment shall be due. That is:

$$\text{MCP} = 0$$

- B. In the event that the ACBF is greater than 75% but less than 95%, then the Monthly Capacity Payment shall be calculated by using the following formula:

$$\text{MCP} = \text{BCP} \times [1 - [5 \times (.95 - \text{ACBF})]] \times \text{CC}$$

- C. In the event that the ACBF is equal to or greater than 95%, then the Monthly Capacity Payment shall be calculated by using the following formula:

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

Where:

- MCP = Monthly Capacity Payment in dollars.  
BCP = Base Capacity Payment in \$/kW/Month as specified in Appendix D or E.  
CC = Committed Capacity in kW.

ISSUED BY: Javier Portuondo, Managing Director, Rates & Regulatory Strategy - FL  
EFFECTIVE: June 9, 2016



SECTION No. IX  
SECOND REVISED SHEET NO. 9.443  
CANCELS FIRST REVISED SHEET NO. 9.443

- ACBF = Annual Capacity Billing Factor. The ACBF shall be the electric energy actually received by DEF for the 12 consecutive months preceding the date of calculation excluding any energy received during an event of Force Majeure in which the Committed Capacity is temporarily set equal to 0 kW, divided by the product of the Committed Capacity and the number of hours in the 12 consecutive months preceding the date of calculation excluding the hours during an event of Force Majeure in which the Committed Capacity is temporarily set equal to 0 kW. If an event of Force Majeure occurs during the 12 consecutive months preceding the date of calculation in which the Committed Capacity is temporarily set to a value greater than 0 kW then the 12 month rolling average will be pro-rated accordingly. During the first 12 consecutive Monthly Billing Periods commencing with the first Monthly Billing Period in which Capacity Payments are to be made, the calculation of 12-month rolling average ACBF shall be performed as follows (a) during the first Monthly Billing Period, the ACBF shall be equal to the Monthly Availability Factor; (b) thereafter, the calculation of the ACBF shall be computed by summing the electric energy actually received by DEF for the number of full consecutive months preceding the date of calculation excluding any energy received during an event of Force Majeure in which the Committed Capacity is temporarily set equal to 0 kW, divided by the product of the Committed Capacity and the number of hours in the number of full consecutive months preceding the date of calculation excluding the hours during an event of Force Majeure in which the Committed Capacity is temporarily set equal to 0 kW. If an event of Force Majeure occurs during the months preceding the date of calculation in which the Committed Capacity is temporarily set to a value greater than 0 kW then the 12 month rolling average will be pro-rated accordingly. This calculation shall be performed at the end of each Monthly Billing Period until enough Monthly Billing Periods have elapsed to calculate a true 12-month rolling average ACBF.
- MAF = Monthly Availability Factor. The total energy received during the Monthly Billing Period for which the calculation is made, divided by the product of Committed Capacity times the total hours during the Monthly Billing Period.
- Monthly Billing Period = The period beginning on the first calendar day of each calendar month, except that the initial Monthly Billing Period shall consist of the period beginning 12:01 a.m., on the Capacity Delivery Date and ending with the last calendar day of such month.

ISSUED BY: Javier Portuondo, Director, Rates & Regulatory Strategy - FL  
EFFECTIVE: April 29, 2013



SECTION No. IX  
~~THIRD-FOURTH~~ REVISED SHEET 9.444  
CANCELS ~~SECOND-THIRD~~ REVISED SHEET NO.  
9.444

**APPENDIX B  
TO  
DUKE ENERGY FLORIDA, LLC  
RENEWABLE OR QUALIFYING FACILITY LESS THAN 100 KW  
STANDARD OFFER CONTRACT**

**TERMINATION FEE**

Capitalized terms not otherwise defined herein have the meaning ascribed to them in the Standard Offer Contract for the Purchase of Firm Capacity and Energy from a Renewable Energy Producer or a Qualifying Facility less than 100 kW.

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:

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

with: MCPC = 0 for all periods prior to the in-service date of the Avoided Unit:

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 = DEF's incremental after-tax avoided cost of capital (defined as r in Appendix D).
- MCP<sub>i</sub> = Monthly Capacity Payment paid to RF/QFQF corresponding to the Monthly Billing Period i, calculated in accordance with Appendix A.
- MCPC<sub>i</sub> = Monthly Capacity Payment for Option A corresponding to the Monthly Billing Period i, calculated in accordance with this Contract.

ISSUED BY: Javier Portuondo, Managing Director, Rates & Regulatory Strategy - FL  
EFFECTIVE: April 29, 2013





SECTION No. IX  
SIXTH REVISED SHEET NO. 9.445  
CANCELS FIFTH REVISED SHEET NO. 9.445

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 Capacity Billing Factor, as defined in Appendix A is less than or equal to 75%, 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 Capacity Billing Factor, as defined in Appendix A, is greater than 75% but less than 95%, then the Reduction Value shall be determined as follows:

$$\text{Reduction Value} = \text{Initial Reduction Value} \times [5 \times (\text{ACBF} - .95)]$$

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 Capacity Billing Factor, as defined in Appendix A, is equal to or greater than 95%, 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 DEF 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).

ISSUED BY: Javier Portuondo, Director, Rates & Regulatory Strategy - FL  
EFFECTIVE: June 9, 2016



SECTION No. IX  
~~FIRST-SECOND~~ REVISED SHEET NO. 9.446  
CANCELS ~~ORIGINAL-FIRST~~ SHEET NO. 9.446

**APPENDIX C  
TO  
DUKE ENERGY FLORIDA, LLC  
RENEWABLE OR QUALIFYING FACILITY LESS THAN 100 KW  
STANDARD OFFER CONTRACT**

**DETAILED PROJECT INFORMATION**

Capitalized terms not otherwise defined herein have the meaning ascribed to them in the Standard Offer Contract for the Purchase of Firm Capacity and Energy from a Renewable Energy Producer or a Qualifying Facility less than 100 kW.

Each eligible Contract received by DEF will be evaluated to determine if the underlying RF/QF project is financially and technically viable. The RF/QF shall, to the extent available, provide DEF with a detailed project proposal which addresses the information requested below:

**I. FACILITY DESCRIPTION**

- Project Name
- Project Location
- \* Street Address
- \* Size Plot Plan
- \* Legal Description of Site
- Generating Technology
- Primary Fuel
- Alternate Fuel (if applicable)
- Committed Capacity
- Expected In-Service Date
- Contact Person
- \* Individual's Name and Title
- \* Company Name
- \* Address
- \* Telephone Number
- \* Fax Number

**II. PROJECT PARTICIPANTS**

- Indicate the entities responsible for the following project management activities and provide a detailed description of the experience and capabilities of the entities:

ISSUED BY: Javier Portuondo, Managing Director, Rates & Regulatory Strategy - FL  
EFFECTIVE: April 29, 2013





SECTION No. IX  
FIRST REVISED SHEET NO. 9.447  
CANCELS ORIGINAL SHEET NO. 9.447

- \* Project Development
  - \* Siting and Licensing the Facility
  - \* Designing the Facility
  - \* Constructing the Facility
  - \* Securing the Fuel Supply
  - \* Operating the Facility
- Provide details on all electrical facilities which are currently under construction or operational which were developed by the RF/QF.
  - Describe the financing structure for the projects identified above, including the type of financing used, the permanent financing term, the major lenders and the percentage of equity invested at Financial Closing.

### III. FUEL SUPPLY

- Describe all fuels to be used to generate electricity at the Facility. Indicate the specific physical and chemical characteristics of each fuel type (e.g. Btu content, sulfur content, ash content, etc.). Identify special considerations regarding fuel supply origin, source and handling, storage and processing requirements.
- Provide AFR necessary to support planned levels of generation and list the assumptions used to determine these quantities.
- Provide a summary of the status of the fuel supply arrangements in place to meet the AFR, in each year of the proposed operating life of the Facility. Use the categories below to describe the current arrangement for securing the AFR.

<u>Category</u>	<u>Description of Fuel Supply Arrangement</u>
owned =	fuel is from a fully developed source owned by one or more of the project participants
contract =	fully executed firm fuel contract exists between the developer(s) and fuel supplier(s)
LOI =	a letter of intent for fuel supply exists between developer(s) and fuel supplier(s)
SPP =	small power production facility will burn biomass, waste, or another renewable resource
spot =	fuel supply will be purchased on the spot market
none =	no firm fuel supply arrangement currently in place
other =	fuel supply arrangement which does not fit any of the above categories (please describe)

- Indicate the percentage of the Facility's AFR which is covered by the above fuel supply arrangement(s) for each proposed operating year. The percent of AFR covered for each operating year must total 100%. For fuel supply arrangements identified as owned, contract, or LOI, provide documentation to support this category and explain the fuel price mechanism of the arrangement. In addition, indicate whether or not the fuel price includes delivery and, if so, to what location.

ISSUED BY: Javier Portuondo, Director, Rates & Regulatory Strategy - FL  
EFFECTIVE: April 29, 2013



SECTION No. IX  
FIRST REVISED SHEET NO. 9.448  
CANCELS ORIGINAL SHEET NO. 9.448

- Describe fuel transportation networks available for delivering all primary and secondary fuel to the Facility site. Indicate the mode, route and distance of each segment of the journey, from fuel source to the Facility site. Discuss the current status and pertinent factors impacting future availability of the transportation network.
- Provide AFTR necessary to support planned levels of generation and list the assumptions used to determine these quantities.
- Provide a summary of the status of the fuel transportation arrangements in place to meet the AFTR in each year of the proposed operating life of the Facility. Use the categories below to describe the current arrangement for securing the AFTR.
  - owned = fuel transport via a fully developed system owned by one or more of the project participants
  - contract = fully executed firm transportation contract exists between the developer(s) and fuel transporter(s)
  - LOI = a letter of intent for fuel transport exists between developer(s) and fuel transporter(s)
  - spot = fuel transportation will be purchased on the spot market
  - none = no firm fuel transportation arrangement currently in place
  - other = fuel transportation arrangement which does not fit any of the above categories (please describe)
- Provide the maximum, minimum and average fuel inventory levels to be maintained for primary and secondary fuels at the Facility site. List the assumptions used in determining the inventory levels.
- Provide information regarding RF/QF's plans to maintain sufficient on site fuel to deliver capacity and energy for an uninterrupted seventy-two (72) hour period.

#### IV. PLANT DISPATCHABILITY/CONTROLLABILITY

- Provide the following operating characteristics and a detailed explanation supporting the performance capabilities indicated:
  - \* Ramp Rate (MW/minute)
  - \* Peak Capability (% above Committed Capacity)
  - \* Minimum power level (% of Committed Capacity)
  - \* Facility Turnaround Time, Hot to Hot (hours)
  - \* Start-up Time from Cold Shutdown (hours)
  - \* Unit Cycling (# cycles/yr.)
  - \* MW and MVAR Control (ACC, Manual, Other (please explain))

ISSUED BY: Javier Portuondo, Director, Rates & Regulatory Strategy - FL  
EFFECTIVE: April 29, 2013



SECTION No. IX  
FIRST REVISED SHEET NO. 9.449  
CANCELS ORIGINAL SHEET NO. 9.449

## V. SITING AND LICENSING

- Provide a licensing/permitting milestone schedule, which lists all permits, licenses and variances, required to site the Facility. The milestone schedule shall also identify key milestone dates for baseline monitoring, application preparation, agency review, certification and licensing/siting board approval, and agency permit issuance.
- Provide a licensing/permitting plan that addresses the issues of air emission, water use, wastewater discharge, wetlands, endangered species, protected properties, surrounding land use, zoning for the Facility, associated linear facilities and support of and opposition to the Facility.
- List the emission/effluent discharge limits the Facility will meet and describe in detail the pollution control equipment to be used to meet these limits.

## VI. FACILITY DEVELOPMENT AND PERFORMANCE

- Submit a detailed engineering, procurement, construction, startup and commercial operation schedule. The schedule shall include milestones for site acquisition, engineering phases, selection of the major equipment vendors, architect engineer, and Facility operator, steam host integration and delivery of major equipment. A discussion of the current status of each milestone should also be included where applicable.
- Attach a diagram of the power block arrangement. Provide a list of the major equipment vendors and the name and model number of the major equipment to be installed.
- Provide a detailed description of the proposed environmental control technology for the Facility and describe the capabilities of the proposed technology.
- Attach preliminary flow diagrams for the steam system, water system, and fuel system, and a main electrical one line diagram for the Facility.
- State the expected heat rate (HHV) at 75 degrees Fahrenheit for loads of 100%, 75% and 50%. In addition, attach a preliminary heat balance for the Facility.

## VII. FINANCIAL

- Provide DEF with assurances that the proposed RF/QF project is financially viable in accordance with FPSC Rule 25-17.0832(4)(c) by attaching a detailed pro-forma cash flow analysis. The pro-forma must include, at a minimum, the following assumptions for each year of the project.

ISSUED BY: Javier Portuondo, Director, Rates & Regulatory Strategy - FL  
EFFECTIVE: April 29, 2013





SECTION No. IX  
FIRST REVISED SHEET NO. 9.450  
CANCELS ORIGINAL SHEET NO. 9.450

- Annual Project Revenues

- \* Capacity Payments (\$ and \$/kW/Mo.)
- \* Variable O&M (\$ and \$/MWh)
- \* Energy (\$ and \$/MWh)
- \* Tipping Fees (\$ and \$/ton)
- \* Interest Income
- \* Other Revenues
- \* Variable O&M Escalation (%/yr.)
- \* Energy Escalation (%/yr.)
- \* Tipping Fee Escalation (%/yr.)

- Annual Project Expense

- \* Fixed O&M (\$ and \$/kW/Mo.)
- \* Variable O&M (\$ and \$/MWh)
- \* Energy (\$ and \$/MWh)
- \* Property Taxes (\$)
- \* Insurance (\$)
- \* Emission Compliance (\$ and \$/MWh)
- \* Depreciation (\$ and %/yr.)
- \* Other Expenses (\$)
- \* Fixed O&M Escalation (%/yr.)
- \* Variable O&M Escalation (%/yr.)
- \* Energy Escalation (%/yr.)

- Other Project Information

- \* Installed Cost of the Facility (\$ and \$/kW)
- \* Committed Capacity (kW)
- \* Average Heat Rate - HHV (MBTU/kWh)
- \* Federal Income Tax Rate (%)
- \* Facility Capacity Factor (%)
- \* Energy Sold to DEF (MWh)

- Permanent Financing

- \* Permanent Financing Term (yr.)
- \* Project Capital Structure (percentage of long-term debt, subordinated debt, tax exempt debt and equity)
- \* Financing Costs (cost of long-term debt, subordinated debt, tax exempt debt and equity)
- \* Annual Interest Expense
- \* Annual Debt Service (\$)
- \* Amortization Schedule (beginning balance, interest expense, principal reduction, ending balance)

ISSUED BY: Javier Portuondo, Director, Rates & Regulatory Strategy - FL  
EFFECTIVE: April 29, 2013



SECTION No. IX  
FIRST REVISED SHEET NO. 9.451  
CANCELS ORIGINAL SHEET NO. 9.451

- Provide details of the financing plan for the project and indicate whether the project will be non-recourse project financed. If it will not be project financed please explain the alternative financing arrangement.
- Submit financial statements for the last two years on the principals of the project, and provide an illustration of the project ownership structure.

ISSUED BY: Javier Portuondo, Director, Rates & Regulatory Strategy - FL  
EFFECTIVE: April 29, 2013





SECTION No. IX  
~~FIRST-SECOND~~ REVISED SHEET NO. 9.452  
CANCELS ORIGINAL ~~FIRST~~ SHEET NO. 9.452

**APPENDIX D**  
**TO**  
**DUKE ENERGY FLORIDA, LLC**  
**RENEWABLE OR QUALIFYING FACILITY LESS THAN 100 KW**  
**STANDARD OFFER CONTRACT**  
**RATE SCHEDULE COG-2**

Capitalized terms not otherwise defined herein have the meaning ascribed to them in the Standard Offer Contract for the Purchase of Firm Capacity and Energy from a Renewable Energy Producer or a Qualifying Facility less than 100 kW.

**SCHEDULE**

COG-2, Firm Capacity and Energy from a Renewable Facility ("RF/QF") or a Qualifying Facility less than 100 kW ("QF")

**AVAILABLE**

DEF will, under the provisions of this schedule and the Contract to which this Appendix is attached and incorporated into by reference, purchase firm capacity and energy offered by a RF/QF as defined in the contract. DEF's obligation to contract to purchase firm capacity from such RF/QF by means of this schedule and the Contract will continue no later than the Expiration Date.

**APPLICABLE**

To RF/QFs as defined in the Contract producing capacity and energy for sale to DEF on a firm basis pursuant to the terms and conditions of this schedule and the Contract. "Firm Capacity and Energy" are described by FPSC Rule 25-17.0832, F.A.C., and are capacity and energy produced and sold by a RF/QF pursuant to the Contract provisions addressing (among other things) quantity, time and reliability of delivery.

**CHARACTER OF SERVICE**

Purchases within the territory served by DEF shall be, at the option of DEF, single or three phase, 60-hertz alternating current at any available standard DEF voltage. Purchases from outside the territory served by DEF shall be three phase, 60-hertz alternating current at the voltage level available at the interchange point between DEF and the entry delivering the Firm Capacity and Energy from the RF/QF.

ISSUED BY: Javier Portuondo, Managing Director, Rates & Regulatory Strategy - FL  
EFFECTIVE: April 29, 2013



SECTION No. IX  
FIRST REVISED SHEET NO. 9.453  
CANCELS ORIGINAL SHEET NO. 9.453

#### **LIMITATION**

Purchases under this schedule are subject to FPSC Rules 25-17.080 through 25-17.310, F.A.C., and are limited to those RF/QFs which:

- A. Are defined in the Contract;
- B. Execute a Contract;

#### **RATES FOR PURCHASES BY DEF**

Firm Capacity and Energy are purchased at unit cost, in dollars per kilowatt per month and cents per kilowatt-hour, respectively, based on the value of deferring additional capacity required by DEF. For the purpose of this schedule, an Avoided Unit has been designated by DEF. DEF's next Avoided Unit has been identified in Section 4 of the Contract. Schedule 1 to this Appendix describes the methodology used to calculate payment schedules, general terms, and conditions applicable to the Contract filed and approved pursuant to FPSC Rules 25-17.080 through 25-17.310, F.A.C.

##### **A. Firm Capacity Rates**

Four options, A through D, as set forth below, are available for payments of firm capacity that is produced by a RF/QF and delivered to DEF. Once selected, an option shall remain in effect for the term of the Contract. Exemplary payment schedules, shown below, contain the monthly rate per kilowatt of firm Capacity which the RF/QF has contractually committed to deliver to DEF and are based on a contract term which extends through the Termination Date in Section 4 of the Contract. Payment schedules for other contract terms will be made available to any RF/QF upon request and may be calculated based on the methodologies described in Schedule 1. The currently approved parameters used to calculate the following schedule of payments are found in Schedule 2 to this Appendix.

##### **Option A - Fixed Value of Deferral Payments - Normal Capacity**

Payment schedules under this option are based on the value of a year-by-year deferral of DEF's Avoided Unit with an in-service date as of the Avoided Unit In-Service Date in Section 4 of the Contract, calculated in accordance with FPSC Rule 25-17.0832, F.A.C., as described in Schedule 1. Once this option is selected, the current schedule of payments shall remain fixed and in effect throughout the term of the Contract. The payment schedule for this option follows in Table 3.

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SECTION No. IX  
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Option B - Fixed Value of Deferral Payments - Early Capacity

Payment schedules under this option are based upon the early capital cost component of the value of a year-by-year deferral of the Avoided Unit. The term "early" with respect to Option B means that these payments can start prior to the anticipated in-service date of the Avoided Unit; provided, however, that under no circumstances may payments begin before this RF/QF is delivering Firm Capacity and Energy to DEF pursuant to the terms of the Contract. When this option is selected, the Capacity Payments shall be made monthly commencing no earlier than the Capacity Delivery Date of the RF/QF and calculated as shown on Schedule 1. Capacity Payments under Option B do not result in a prepayment or create a future benefit.

The RF/QF shall select the month and year in which the deliveries of firm capacity and energy to DEF are to commence and Capacity Payments are to start. DEF will provide the RF/QF with a schedule of capacity payment rates based on the month and year in which the deliveries of firm capacity and energy are to commence and the term of the Contract. The exemplary payment schedule in Table 3 is based on a contract term that begins on the Exemplary Early Capacity Payment Date in Section 4 of the Contract.

Option C - Fixed Value of Deferral Payment - Levelized Capacity

Payment schedules under this option are based upon the levelized capital cost component of the value of a year-by-year deferral of the Avoided Unit. The capital portion of Capacity Payments under this option shall consist of equal monthly payments over the term of the Contract, calculated as shown on Schedule 1. The fixed operation and maintenance portion of Capacity Payments shall be equal to the value of the year-by-year deferral of fixed operation and maintenance expense associated with the Avoided Unit. These calculations are shown in Schedule 1. The payment schedule for this option is contained in Table 3. Capacity Payments under Option C do not result in a prepayment or create a future benefit.

Option D - Fixed Value of Deferral Payment - Early Levelized Capacity

Payment schedules under this option are based upon the early levelized capital cost component of the value of a year-by-year deferral of the Avoided Unit. The capital portion of Capacity Payments under this option shall consist of equal monthly payments over the term of the Contract, calculated as shown on Schedule 1. The fixed operation and maintenance expense shall be calculated as shown in Schedule 1.

The RF/QF shall select the month and year in which the deliveries of firm capacity and energy to DEF are to commence and Capacity Payments are to start. DEF will provide the RF/QF with a schedule of capacity payment rates based on the month and year in which the deliveries of firm capacity and energy are to commence and the term of the Contract. The exemplary payment schedule in Table 3 is based on a contract term that begins on the Exemplary Early Capacity Payment Date in Section 4 of the Contract.

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9.455

**TABLE 3**  
**EXAMPLE MONTHLY CAPACITY PAYMENT IN \$/kW/MONTH**  
DEF'S June 1, ~~2024~~ 2027 Undesignated CT  
Renewable or Qualifying Facility Standard Offer Contract Avoided Capacity Payments  
(\$/kW/MONTH)

Contract Year	<u>Option A</u> Normal Capacity Payment Starting on the Avoided Unit In-Service Date	<u>Option B</u> Early Capacity Payment Starting on the Exemplary Capacity Payment Date	<u>Option C</u> Levelized Capacity Payment Starting on the Avoided Unit In-Service Date	<u>Option D</u> Early Levelized Capacity Payment Starting on the Exemplary Capacity Payment Date
<del>2024</del>				
<del>2025</del>		<u>3.723.36</u>		<u>4.193.80</u>
<del>2026</del>		<u>3.813.45</u>		<u>4.203.80</u>
<del>2027</del>	<u>4.844.37</u>	<u>3.913.53</u>	<u>5.374.84</u>	<u>4.213.81</u>
<del>2028</del>	<u>4.964.48</u>	<u>4.003.62</u>	<u>5.384.85</u>	<u>4.213.82</u>
<del>2029</del>	<u>5.094.59</u>	<u>4.103.71</u>	<u>5.384.86</u>	<u>4.223.82</u>
<del>2030</del>	<u>5.224.70</u>	<u>4.213.81</u>	<u>5.394.87</u>	<u>4.233.83</u>
<del>2031</del>	<u>5.354.82</u>	<u>4.313.90</u>	<u>5.404.87</u>	<u>4.233.83</u>
<del>2032</del>	<u>5.484.94</u>	<u>4.424.00</u>	<u>5.414.88</u>	<u>4.243.84</u>
<del>2033</del>	<u>5.625.07</u>	<u>4.534.10</u>	<u>5.424.89</u>	<u>4.253.85</u>
<del>2034</del>	<u>5.765.19</u>	<u>4.644.20</u>	<u>5.434.90</u>	<u>4.263.86</u>
<del>2035</del>	<u>5.905.32</u>	<u>4.764.31</u>	<u>5.444.91</u>	<u>4.263.86</u>
<del>2036</del>	<u>6.055.46</u>	<u>4.884.41</u>	<u>5.454.92</u>	<u>4.273.87</u>
<del>2037</del>	<u>6.205.59</u>	<u>5.004.52</u>	<u>5.464.93</u>	<u>4.283.88</u>

- The Capacity Payment schedules contained in this Contract assume a term of ten years from the Avoided Unit In-Service Date. In the event the RF/QF requests a term greater than ten years but less than the Avoided Unit Life then DEF shall prepare a schedule of Capacity Payments for the requested term. Such Capacity Payment rates shall be calculated utilizing the value-of-deferral methodology described in FPSC Rule 25-17.0832(6).

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SECTION No. IX  
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CANCELS FIRST REVISED SHEET NO. 9.456

2. The RF/QF may also request an alternative Capacity Payment rate stream from DEF as authorized by Rule 25-17.250(4). Regardless of the Capacity Payment rate stream requested by the RF/QF, the cumulative present value of the capital cost payments made to the RF/QF over the term of the Contract shall not exceed the cumulative present value of the capital cost payments had such payments been made pursuant to FPSC Rule 25-17.0832(4)(g)(i). Fixed operation and maintenance expense shall be calculated to conform with FPSC Rule 25-17.0832(6)(b). Such an alternative Capacity Payment rate shall be subject to the Termination Fee in Appendix B.

In the event that alternative Capacity Payment rates are agreed upon, such Capacity Payment rate schedule shall be attached to the Contract in Appendix E.

**B. Energy Rates**

Payments Prior to the Avoided Unit In-Service Date

1. The energy rate, in cents per kilowatt-hour (¢/kWh), shall be based on DEF's actual hourly avoided energy costs which are calculated by DEF 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 DEF from the Facility for that hour. All purchases shall be adjusted for losses from the point of metering to the point of interconnection.

2. Upon request of the RF/QF, DEF shall provide the RF/QF the option of receiving energy payments based on DEF's year-by-year projection of system incremental costs prior to hourly economy energy sales to other utilities, based on normal weather and fuel conditions plus a mutually agreed upon market volatility risk premium.

Payments Starting on Avoided Unit In-Service Date

The calculation of payments to the RF/QF for energy delivered to DEF, on and after the Avoided Unit In-Service Date shall be the sum, over all hours of the Monthly Billing Period, of the product of (a) each hour's Firm Energy Rate (¢/kWh); and (b) the amount of energy (kWh) delivered to DEF from the Facility during that hour.





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For any period during which energy is delivered by the RF/QF to DEF, the Firm Energy Rate in cents per kilowatt hour (¢/kWh) shall be the following on an hour-by-hour basis: the lesser of (a) the As-Available Energy Rate and (b) the Avoided Unit Energy Cost. The Avoided Unit Energy Cost, in cents per kilowatt - hour (¢/kWh) shall be defined as the product of (a) the Avoided Unit Fuel Cost and (b) the Avoided Unit Heat Rate; plus (c) the Avoided Unit Variable O&M.

For the purposes of this agreement, the Avoided Unit Fuel Cost shall be determined from gas price published in Platts Inside FERC, Gas Market Report, first of the month posting for Florida Gas Transmission ("FGT") Zone 3, plus other charges, surcharges and percentages that are in effect from time to time.

The Parties may mutually agree to fix a minority portion of the base firm energy payments associated with the Avoided Unit and amortize that fixed portion, on a present value basis, over the term of the Contract. Such fixed firm energy payments may, at the option of the RF/QF, start as early as the Avoided Unit In-Service Date. For purposes of this paragraph, "base firm energy payments associated with the Avoided Unit" means the energy costs of the Avoided Unit to the extent that the Avoided Unit would have been operated. If this option is mutually agreed upon, it will be attached to this Contract in Appendix E.

#### **ESTIMATED AS-AVAILABLE ENERGY COST**

As required in Section 25-17.0825, F.A.C., information relating to as-available energy cost projections will be provided within 30 days of a written request for such projections by any interested person.

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SECTION No. IX  
~~ELEVENTH-TWELFTH~~ REVISED SHEET NO. 9.458  
CANCELS ~~ELEVENTH-TENTH~~ REVISED SHEET NO.  
9.458

### ESTIMATED UNIT FUEL COST

As required in Section 25-17.0832, F.A.C., the estimated fuel costs associated with DEF's Avoided Unit are based on current estimates of the price of natural gas and will be provided within 30 days of a written request for such projections by any interested person.

### DELIVERY VOLTAGE ADJUSTMENT

DEF's average system line losses are analyzed annually for the prior calendar year, and delivery efficiencies are developed for the transmission, distribution primary, and distribution secondary voltage levels. This analysis is provided in the DEF's Procedures For Changing The Real Power Loss Factor (currently Attachment Q) in its Open Access Transmission Tariff and DEF's fuel cost recovery filing with the FPSC. An adjustment factor, calculated as the reciprocal of the appropriate delivery efficiency factor, is applicable to the above determined energy costs if the RF/QF is within DEF's service territory to reflect the delivery voltage level at which RF/QF energy is received by the DEF.

The current delivery voltage adjustment factors are:

<u>Delivery Voltage</u>	<u>Adjustment Factor</u>
Transmission Voltage Delivery	1.01 <u>5336</u>
Primary Voltage Delivery	1.02 <u>5736</u>
Secondary Voltage Delivery	1.06 <u>27629</u>

### PERFORMANCE CRITERIA

Payments for firm Capacity are conditioned on the RF/QF's ability to maintain the following performance criteria:

A. Capacity Delivery Date

The Capacity Delivery Date shall be no later than the Required Capacity Delivery Date.

B. Availability and Capacity Factor

The Facility's availability and capacity factor are used in the determination of firm Capacity Payments through a performance based calculation as detailed in Appendix A to the Contract.

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CANCELS SECOND REVISED SHEET NO. 9.459

### **METERING REQUIREMENTS**

The RF/QFs within the territory served by DEF shall be required to purchase from DEF hourly recording meters to measure their energy deliveries to DEF. Energy purchases from the RF/QFs outside the territory of DEF shall be measured as the quantities scheduled for interchange to DEF by the entity delivering Firm Capacity and Energy to DEF.

### **BILLING OPTIONS**

A RF/QF, upon entering into this Contract for the sale of firm capacity and energy or prior to delivery of as-available energy, may elect to make either simultaneous purchases from and sales to DEF, or net sales to DEF; provided, however, that no such arrangement shall cause the RF/QF to sell more than the Facility's net output. A decision on billing methods may only be changed: 1) when a RF/QF selling as-available energy enters into this Contract for the sale of firm capacity and energy; 2) when a Contract expires or is lawfully terminated by either the RF/QF or DEF; 3) when the RF/QF is selling as-available energy and has not changed billing methods within the last twelve months; 4) when the election to change billing methods will not contravene the provisions of FPSC Rule 25-17.0832 or a contract between the RF/QF and DEF.

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 DEF; 2) the installation by DEF 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 DEF 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).

Payments due a 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 rates at which payment are being made shall accompany the payment to the RF/QF.

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SECTION No. IX  
FOURTH REVISED SHEET NO. 9.460  
CANCELS THIRD REVISED SHEET NO. 9.460

**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 DEF. The RF/QF shall be billed at the customer charge rate stated in DEF'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.

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**SCHEDULE 1  
TO RATE SCHEDULE COG-2**

**CALCULATION OF VALUE OF DEFERRAL PAYMENTS**

**APPLICABILITY**

This Schedule 1 provides a detailed description of the methodology used by DEF to calculate the monthly values of deferring or avoiding the Avoided Unit identified in the Contract. When used in conjunction with the current FPSC-approved cost parameters associated with the Avoided Unit contained in Schedule 2, a RF/QF may determine the applicable value of deferral capacity payment rate associated with the timing and operation of its particular facility should the RF/QF enter into a Contract with DEF.

Also contained in this Schedule 1 is the discussion of the types and forms of surety bond requirements or equivalent assurance for payment of the Termination Fee acceptable to DEF in the event of contractual default by a RF/QF.

**CALCULATION OF VALUE OF DEFERRAL OPTION A**

FPSC Rule 25-17.0832(5) specifies that avoided capacity costs, in dollars per kilowatt per month, associated with capacity sold to a utility by a RF/QF pursuant to Contract shall be defined as the year-by-year value of deferral of the Avoided Unit. The year-by-year value of deferral shall be the difference in revenue requirements associated with deferring the Avoided Unit one year, and shall be calculated as follows:

$$VAC_m = 1/12 [KI_n (1 - R) / (1 - R^L) + O_n]$$

Where, for a one year deferral:

- $VAC_m$  = utility's monthly value of avoided capacity, in dollars per kilowatt per month, for each month of year n;
- $K$  = present value of carrying charges for one dollar of investment over L years with carrying charges computed using average annual rate base and assumed to be paid at the middle of each year and present valued to the middle of the first year;
- $R$  =  $(1 + i_p) / (1 + r)$ ;
- $I_n$  = total direct and indirect cost, in mid-year dollars per kilowatt including AFUDC but excluding CWIP, of the Avoided Unit with an in-service date of year n, including all identifiable and quantifiable costs relating to the construction for the Avoided Unit which would have been paid had the Avoided Unit been constructed;

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- $O_n$  = total fixed operation and maintenance expense for the year  $n$ , in mid-year dollars per kilowatt per year, of the Avoided Unit;
- $i_p$  = annual escalation rate associated with the plant cost of the Avoided Unit;
- $i_o$  = annual escalation rate associated with the operation and maintenance expense of the Avoided Unit;
- $r$  = annual discount rate, defined as the utility's incremental after-tax cost of capital;
- $L$  = expected life of the Avoided Unit; and
- $n$  = year for which the Avoided Unit is deferred starting with the Avoided Unit In-Service Date and ending with the Termination Date.

**CALCULATION OF FIXED VALUE OF DEFERRAL PAYMENTS - EARLY CAPACITY-OPTION B**

Under the fixed value of deferral Option A, payments for firm capacity shall not commence until the in-service date of the Avoided unit(s). At the option of the RF/QF, however, DEF may begin making payments for capacity consisting of the capital cost component of the value of a year-by-year deferral of the Avoided Unit prior to the anticipated in-service date of the Avoided Unit. When such payments for capacity are elected, the avoided capital cost component of Capacity Payments shall be paid monthly commencing no earlier than the Capacity Delivery Date of the RF/QF, and shall be calculated as follows:

$$A_M = [A_c (1 + i_p)^{(m-1)} + A_o (1 + i_o)^{(m-1)}] / 12 \quad \text{for } m = 1 \text{ to } t$$

Where:

- $A_M$  = monthly payments to be made to the RF/QF for each month of the contract year  $n$ , in dollars per kilowatt per month in which RF/QF delivers capacity pursuant to the early capacity option;
- $i_p$  = annual escalation rate associated with the plant cost of the Avoided Unit;
- $i_o$  = annual escalation rate associated with the operation and maintenance expense of the Avoided Unit;

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$m$  = year for which the fixed value of deferral payments under the early capacity option are made to a RF/QF, starting in year one and ending in the year  $t$ ;

$t$  = the Term, in years, of the Contract:

$A_c$  =  $F [ (1 - R) / (1 - R^t) ]$

Where:

$F$  = the cumulative present value, in the year that the contractual payments will begin, of the avoided capital cost component of Capacity Payments which would have been made had Capacity Payments commenced with the Avoided Unit In-Service Date;

$R$  =  $(1 + i_p) / (1 + r)$

$r$  = annual discount rate, defined as DEF's incremental after-tax cost of capital; and

$A_o$  =  $G [ (1 - R) / (1 - R^t) ]$

Where:

$G$  = The cumulative present value, in the year that the contractual payments will begin, of the avoided fixed operation and maintenance expense component of Capacity Payments which would have been made had Capacity Payments commenced with the Avoided Unit In-Service Date.

$R$  =  $(1 + i_o) / (1 + r)$

The currently approved parameters applicable to the formulas above are found in Schedule 2.

**CALCULATION OF FIXED VALUE OF DEFERRAL PAYMENTS -  
LEVELIZED AND EARLY LEVELIZED CAPACITY - OPTION C & OPTION D,  
RESPECTIVELY**

Monthly fixed value of deferral payments for levelized and early levelized capacity shall be calculated as follows:

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$$P_L = (F / 12) \cdot [r / 1 - (1 + r)^{-t}] + O$$

Where:

- $P_L$  = the monthly levelized capacity payment, starting on or prior to the in-service date of DEF's Avoided Unit(s);
- $F$  = the cumulative present value, in the year that the contractual payments will begin, of the avoided capital cost component of the Capacity Payments which would have been made had the Capacity Payments not been levelized;
- $r$  = the annual discount rate, defined as DEF's incremental after-tax cost of capital;
- $t$  = the Term, in years of the Contract
- $O$  = the monthly fixed operation and maintenance component of the Capacity Payments, calculated in accordance with calculation of the fixed value of deferral payments for the levelized capacity or the early levelized capacity options.

#### **RISK-RELATED GUARANTEES**

With the exception of governmental solid waste facilities covered by FPSC Rule 25-17.091, FPSC Rule 25-17.0832 (4)(e)10 requires that, when fixed value of deferral payments - early capacity, levelized capacity, or early levelized capacity are elected, the RF/QF must provide a surety bond or equivalent assurance of securing the payment of a Termination Fee in the event the RF/QF is unable to meet the terms and conditions of its Contract. Depending on the nature of the RF/QF's operation, financial health and solvency, and its ability to meet the terms and conditions of the Contract, one of the following may constitute an equivalent assurance of payment:

- (1) Bond;
- (2) Cash deposit(s) with DEF;
- (3) Unconditional, irrevocable, direct pay Letter of Credit;
- (4) Unsecured promise by a municipal, county or state government to repay payments for early or levelized capacity in the event of default, in conjunction with a legally binding commitment from such government allowing the utility to levy a surcharge on either the electric bills of the government's electricity consuming facilities or the constituent electric customers of such government to assure that payments for early or levelized capacity are repaid;
- (5) Unsecured promise by a privately-owned RF/QF to repay payments for early or levelized capacity in the event of default, in conjunction with a legally binding commitment from the owner(s) of the RF/QF, parent company, and/or subsidiary companies located in Florida to assure that payments for early, levelized or early levelized capacity are repaid; or
- (6) Other guarantees acceptable to DEF.

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DEF will cooperate with each RF/QF applying for fixed value of deferral payments under the early, levelized or early levelized capacity options to determine the exact form of an "equivalent assurance" for payment of the Termination Fee to be required based on the particular aspects of the RF/QF. DEF will endeavor to accommodate an equivalent assurance of repayment which is in the best interests of both the RF/QF and DEF's ratepayers.

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~~ELEVENTH-TWELFTH~~ REVISED SHEET NO. 9.467  
CANCELS ~~TENTH-ELEVENTH~~ REVISED SHEET  
NO. 9.467

**SCHEDULE 2  
TO RATE SCHEDULE COG-2CAPACITY OPTION PARAMETERS**

**FIXED VALUE OF DEFERRAL PAYMENTS -  
NORMAL CAPACITY OPTION PARAMETERS**

Where, for one year deferral:

		<u>Value</u>
$VAC_m$	= DEF's value of avoided capacity and O&M, in dollars per kilowatt per month, during month m;	<u>4.8437</u>
$K$	= present value of carrying charges for one dollar of investment over L years with carrying charges computed using average annual rate base and assumed to be paid at the middle of each year and present valued to the middle of the first year;	<u>1.284317</u>
$I_n$	= total direct and indirect cost, in mid-year dollars per kilowatt including AFUDC but excluding CWIP, of the Avoided Unit with an in-service date of year n;	<u>767.95697.2</u> 7
$O_n$	= total fixed operation and maintenance expense, for the year n, in mid-year dollars per kilowatt per year, of the Avoided Unit;	<u>3.8567</u>
$i_p$	= annual escalation rate associated with the plant cost of the Avoided Unit;	2.50%
$i_o$	= annual escalation rate associated with the operation and maintenance expense of the Avoided Unit;	2.50%
$r$	= annual discount rate, defined as DEF's incremental after-tax cost of capital;	<u>7.156.85%</u>
$L$	= expected life of the Avoided Unit;	35
$n$	= year for which the Avoided Unit is deferred starting with the Avoided Unit In-Service Date and ending with the Termination Date.	<u>20274</u>

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CANCELS ~~TENTH-ELEVENTH~~ REVISED SHEET  
NO. 9.468

**FIXED VALUE OF DEFERRAL PAYMENTS -  
EARLY CAPACITY OPTION PARAMETERS**

$A_m$	=	monthly avoided capital cost component of Capacity Payments to be made to the RF/QF starting as early as two years prior to the Avoided Unit In-Service Date, in dollars per kilowatt per month;	<u>3.4743</u>
$i_p$	=	annual escalation rate associated with the plant cost of the Avoided Unit;	2.50%
$n$	=	year for which early Capacity Payments to a RF/QF are to begin;	202 <u>52</u>
$F$	=	the cumulative present value of the avoided capital cost component of Capacity Payments which would have been made had Capacity Payments commenced with the anticipated in-service date of the Avoided Unit and continued for a period of 10 years;	<u>259.42763</u> 8
$r$	=	annual discount rate, defined as DEF's incremental after-tax cost of capital;	<u>7.15685%</u>
$t$	=	the Term, in years, of the Contract for the purchase of firm capacity commencing prior to the in-service date of the Avoided Unit;	13
$G$	=	the cumulative present value of the avoided fixed operation and maintenance expense component of Capacity Payments which would have been made had Capacity Payments commenced with the anticipated in-service date of the Avoided Unit and continued until the Termination Date.	<u>20.8018.40</u>

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CANCELS ~~ORIGINAL-FIRST~~ SHEET NO. 9.470

APPENDIX E

TO  
DUKE ENERGY FLORIDA, LLC  
RENEWABLE OR QUALIFYING FACILITY LESS THAN 100 KW  
STANDARD OFFER CONTRACT

AGREED UPON PAYMENT SCHEDULES  
AND OTHER MUTUAL AGREEMENTS

ISSUED BY: Javier Portuondo, Managing Director, Rates & Regulatory Strategy - FL  
EFFECTIVE: April 29, 2013



SECTION No. IX  
FIRST REVISED SHEET NO. 9.475  
CANCELS ORIGINAL SHEET NO. 9.475

**APPENDIX F  
FPSC RULES 25-17.080 THROUGH 25-17.310  
ARE PROVIDED IN SECTION VIII  
ON THIS TARIFF BOOK**

ISSUED BY: Javier Portuondo, Director, Rates & Regulatory Strategy - FL  
EFFECTIVE: April 29, 2013



SECTION No. IX  
FIRST REVISED SHEET NO. 9.461  
CANCELS ORIGINAL SHEET NO. 9.461

**TERMS OF SERVICE**

- A. It shall be the RF/QF's responsibility to inform DEF of any change in its electric generation capability.
- B. Any electric service delivered by DEF to a RF/QF located in DEF's service area shall be subject to the following terms and conditions:
  - (1) A RF/QF shall be metered separately and billed under the applicable retail rate schedule(s), whose terms and conditions shall pertain.
  - (2) A security deposit will be required in accordance with FPSC Rules 25-17.082(5) and 25-6.097, F.A.C., and the following:
    - (i) In the first year of operation, the security deposit should be based upon the singular month in which the RF/QF's projected purchases from DEF exceed, by the greatest amount, DEF's estimated purchases from the RF/QF. The security deposit should be equal to twice the amount of the difference estimated for that month. The deposit is required upon interconnection.
    - (ii) For each year thereafter, a review of the actual sales and purchases between the RF/QF and DEF will be conducted to determine the actual month of maximum difference. The security deposit should be adjusted to equal twice the greatest amount by which the actual monthly purchases by the RF/QF exceed the actual sales in DEF in that month.
  - (3) DEF shall specify the point of interconnection and voltage level.
  - (4) The RF/QF must enter into an interconnection to DEF's system. Specific features of the RF/QF and its interconnection to DEF's facilities will be considered by DEF in preparing the interconnection agreement. Notwithstanding the above, interconnection with, and delivery into, the Company's system must be accomplished in accordance with the provisions of FPSC Rule 25-17.087.
- C. Service under this rate schedule is subject to the rules and regulations of the FPSC.

ISSUED BY: Javier Portuondo, Director, Rates & Regulatory Strategy - FL  
EFFECTIVE: April 29, 2013

# Item 10



State of Florida



## Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD  
TALLAHASSEE, FLORIDA 32399-0850

**-M-E-M-O-R-A-N-D-U-M-**

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**DATE:** May 23, 2018

**TO:** Office of Commission Clerk (Stauffer) *W*

**FROM:** Division of Engineering (Wooten, Wright) *SCW*  
Division of Economics (Higgins) *WBM*  
Office of the General Counsel (Dziechciarz) *RD* *CM* *On TB*

**RE:** Docket No. 20180081-EQ – Petition for approval of new standard offer for purchase of firm capacity and energy from renewable energy facilities or small qualifying facilities and approval of tariff schedule REF-1, by Gulf Power Company.

**AGENDA:** 06/05/18 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

**COMMISSIONERS ASSIGNED:** All Commissioners

**PREHEARING OFFICER:** Administrative

**CRITICAL DATES:** None

**SPECIAL INSTRUCTIONS:** Staff recommends the Commission simultaneously consider Docket Nos. 20180073-EQ, 20180081-EQ, 20180082-EQ, 20180083-EQ and 20180091-EQ

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### Case Background

Section 366.91(3), Florida Statutes (F.S.), requires that each investor-owned utility (IOU) continuously offer to purchase capacity and energy from renewable energy generators and small qualifying facilities. Florida Public Service Commission (Commission) Rules 25-17.200 through 25-17.310, Florida Administrative Code (F.A.C.), implement the statute and require each IOU to file with the Commission by April 1 of each year, a standard offer contract based on the next avoidable fossil fueled generating unit of each technology type identified in the Utility's current Ten-Year Site Plan. On April 2, 2018, Gulf Power Company (Gulf or Company) filed a petition

Docket No. 20180081-EQ

Date: May 23, 2018

for approval of its revised standard offer contract and rate schedule REF-1 for renewable energy facilities or small qualifying facilities based on its 2018 Ten-Year Site Plan.<sup>1</sup>

The Commission has jurisdiction over this standard offer contract pursuant to Sections 366.04 through 366.06 and 366.91, F.S.

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<sup>1</sup>April 2, 2018, was the first business day following the Sunday, April 1 deadline for standard offer contract filings.



### Discussion of Issues

**Issue 1:** Should the Commission approve the revised standard offer contract and schedule REF-1 filed by Gulf Power Company?

**Recommendation:** Yes. The provisions of Gulf's revised standard offer contract and schedule REF-1 conform to all requirements of Rules 25-17.200 through 25-17.310, F.A.C. Gulf's revised standard offer contract provides flexibility in the arrangements for payments so that a developer of renewable generation may select the payment stream best suited to its financial needs. Staff recommends that Gulf's revised standard offer contract and schedule REF-1 be approved as filed. (Wooten, Wright, Higgins)

**Staff Analysis:** Rule 25-17.250, F.A.C., requires that Gulf, an IOU, continuously make available a standard offer contract for the purchase of firm capacity and energy from renewable generating facilities (RF) and small qualifying facilities (QF) with design capacities of 100 kilowatts (kW) or less. Pursuant to Rule 25-17.250(1) and (3), F.A.C., the standard offer contract must provide a term of at least 10-years, and the payment terms must be based on the Utility's next avoidable fossil-fueled generating unit identified in its most recent Ten-Year Site Plan or, if no avoided unit is identified, its next avoidable planned purchase. Gulf has identified a 595 megawatt (MW) dual-fuel 1-on-1 combined cycle generating facility as its next planned fossil-fueled generating unit in its 2018 Ten-Year Site Plan. The projected in-service date of this facility is June 1, 2024.

The RF/QF operator may elect to make no commitment as to the quantity or timing of its deliveries to Gulf, and to have a committed capacity of zero (0) MW. Under such a scenario, the energy is delivered on an as-available basis, and the operator receives only an energy payment. Alternatively, the RF/QF operator may elect to commit to certain minimum performance requirements based on the identified avoided unit, such as being operational and delivering an agreed upon amount of capacity by the in-service date of the avoided unit and thereby becomes eligible for capacity payments in addition to payments received for energy. The standard offer contract may also serve as a starting point for negotiation of contract terms by providing payment information to an RF/QF operator, in a situation where one or both parties desire particular contract terms other than those established in the standard offer.

In order to promote renewable generation, the Commission requires the IOU to offer multiple options for capacity payments, including the options to receive early or levelized payments. If the RF/QF operator elects to receive capacity payments under the normal or levelized contract options, it will receive as-available energy payments only until the in-service date of the avoided unit (in this case June 1, 2024), and thereafter begin receiving capacity payments in addition to the energy payments. If either the early or levelized option is selected, then the operator will begin receiving capacity payments earlier than the in-service date of the avoided unit. However, payments made under the early capacity payment options tend to be lower in the later years of the contract term because the net present value (NPV) of the total payments must remain equal for all contract payment options.



Table 1 below, contains estimates of the annual payments for each payment option available under the revised standard offer contract to an operator with a 50 MW facility, operating at a capacity factor of 88 percent, and meeting the minimum requirement specified in the contract to qualify for full capacity payments. Normal and levelized capacity payments begin in 2024, reflecting the projected in-service date of the avoided unit (June 1, 2024).

**Table 1-Estimated Annual Payments to a 50 MW Renewable Facility  
88% Capacity Factor**

Year	Energy Payment \$(000)	Capacity Payment (By Type)			
		Normal \$(000)	Levelized \$(000)	Early \$(000)	Early Levelized \$(000)
2019	10,391	-	-	3,881	4,291
2020	11,355	-	-	3,963	4,322
2021	11,860	-	-	4,045	4,353
2022	12,272	-	-	4,130	4,385
2023	12,831	-	-	4,216	4,417
2024	13,601	4,156	4,478	4,304	4,450
2025	14,554	7,190	7,689	4,394	4,484
2026	14,739	7,303	7,710	4,486	4,519
2027	15,526	7,420	7,732	4,580	4,554
2028	15,939	7,538	7,754	4,676	4,590
2029	16,690	7,659	7,777	4,773	4,627
2030	17,476	7,783	7,801	4,873	4,664
2031	18,181	7,909	7,825	4,975	4,703
2032	19,031	8,038	7,849	5,079	4,742
2033	20,101	8,170	7,874	5,185	4,782
2034	21,450	8,304	7,899	5,293	4,822
2035	22,340	8,441	7,925	5,404	4,864
2036	23,352	8,581	7,952	5,517	4,906
2037	24,213	8,725	7,979	5,632	4,950
2038	25,493	8,871	8,006	5,750	4,994
<b>Total</b>	341,396	116,087	114,249	95,159	92,420
<b>NPV (2019\$)</b>	171,285	50,546	50,546	50,546	50,546

Source: Gulf's Response to Staff's First Data Request<sup>2</sup>

<sup>2</sup>Document No. 03421-2018, filed May 02, 2018, in Docket No. 20180081-EQ.

Gulf's standard offer contract and schedule REF-1, in type-and-strike format, are included as Attachment A. All of the changes made to the tariff sheets are consistent with the updated avoided unit. Revisions include updates to dates and payment information which reflect the current economic and financial assumptions for the avoided unit costs.

Additional language was included on Sheet 9.82 that detailed if a Facility elected to make no commitment for quantity or timing of its deliveries to the Company it would have a Committed Capacity of 0 MW in its Renewable Standard Offer. In response to a staff data request, Gulf explained the language was included to clarify that generators electing to make no commitment would not be entitled to receive capacity payments under the standard offer contract or associated rate schedule. This language was consistent with Gulf's 2017 renewable standard offer contract which was approved by the Commission.<sup>3</sup>

### **Conclusion**

The provisions of Gulf's revised standard offer contract and schedule REF-1 conform to all requirements of Rules 25-17.200 through 25-17.310, F.A.C. The revised standard offer contract provides flexibility in the arrangements for payments so that a developer of renewable generation may select the payment stream best suited to its financial needs. Staff recommends that Gulf's revised standard offer contract and schedule REF-1 be approved as filed.

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<sup>3</sup>Order No. PSC-2017-0295-PAA-EQ, issued August 1, 2017, in Docket No. 20170076-EQ, *In re: Petition for approval of new standard offer for purchase of firm capacity and energy from renewable energy facilities or small qualifying facilities and approval of tariff schedule REF-1*, by Gulf Power Company.



**Issue 2:** Should this docket be closed?

**Recommendation:** Yes. This docket should be closed upon issuance of a consummating order, unless a person whose substantial interests are affected by the Commission's decision files a protest within 21 days of the issuance of the Commission's Proposed Agency Action Order. Potential signatories should be aware that, if a timely protest is filed, Gulf's standard offer contract may subsequently be revised. (Dziechciarz)

**Staff Analysis:** This docket should be closed upon the issuance of a consummating order, unless a person whose substantial interests are affected by the Commission's decision files a protest within 21 days of the issuance of the Commission's Proposed Agency Action Order. Potential signatories should be aware that, if a timely protest is filed, Gulf's standard offer contract may subsequently be revised.



Rhonda J. Alexander  
Manager  
Regulatory, Forecasting & Pricing

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850 444 6743 tel  
850 444 6026 fax  
rjalexad@gulfpower.com

April 2, 2018

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

Dear Ms. Stauffer:

Attached is Gulf Power Company's Petition for Approval of a New Standard Offer for Purchase of Firm Capacity and Energy from Renewable Energy Facilities or Small Qualifying Facilities. Also attached for approval are copies of the Revised Tariff Schedule REF-1. This filing is made pursuant to Section 366.91, Florida Statutes, and Rules 25-17.200 through 25-17.310, Florida Administrative Code.

Please return a copy of the approved tariff sheets to my attention.

Sincerely,

A handwritten signature in blue ink that reads "Rhonda J. Alexander".

Rhonda J. Alexander  
Regulatory, Forecasting and Pricing Manager

md

Attachments

cc w/ att: Gulf Power Company  
Jeffery A. Stone, Esq., General Counsel  
Beggs & Lane  
Russell Badders, Esq.  
Florida Public Service Commission  
Patti Daniel

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Petition of Gulf Power Company  
For Approval of a Standard Offer Contract  
For Purchase of Firm Capacity and Energy  
From Renewable Energy Facilities or Small  
Qualifying Facilities and Approval of Tariff  
Schedule REF-1

Docket No.:  
Filed: April 2, 2018

**GULF POWER COMPANY'S PETITION FOR APPROVAL  
OF A NEW STANDARD OFFER FOR PURCHASE OF FIRM CAPACITY  
AND ENERGY FROM RENEWABLE ENERGY FACILITIES  
OR SMALL QUALIFYING FACILITIES AND APPROVAL OF  
TARIFF SCHEDULE REF-1**

Gulf Power Company ("Gulf Power," or "the Company"), pursuant to section 366.91, Florida Statutes, and Rules 25-17.200 - 25-17.310, Florida Administrative Code, petitions the Florida Public Service Commission ("the Commission") to approve a Standard Offer Contract for Purchase of Firm Capacity and Energy from Renewable Energy Facilities or Small Qualifying Facilities ("Renewable Standard Offer Contract") and associated revised tariff schedule REF-1. As grounds therefore, the Company says:

1. The name, address, telephone number and facsimile number of the Petitioner are:

Gulf Power Company  
One Energy Place  
Pensacola, Florida 32520-0780  
(850) 444-6530  
(850) 444-6026 (fax)

2. Gulf Power is a public utility subject to the jurisdiction of the Commission under Chapter 366, Florida Statutes.

3. All notices, pleadings and correspondence required to be served on the Petitioner should be directed to:

Rhonda J. Alexander  
Gulf Power Company  
One Energy Place  
Pensacola, FL 32520-0780  
(850) 444-6743  
(850-444-6026) (Facsimile)  
[rjalexad@southernco.com](mailto:rjalexad@southernco.com)

Jeffrey A. Stone Esq.  
General Counsel  
Gulf Power Company  
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Pensacola, Florida 32591-2950  
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(850) 469-3331 (facsimile)

4. On February 22, 2007, the Commission adopted amendments to Rule 25-17.0832, F.A.C. and new Rules 25-17.200 - 25-17.310, F.A.C., relating to renewable generating facilities. The rules require, *inter alia*, that each investor-owned utility file with the Commission, by April 1 of each year, a standard offer contract or contracts for the purchase of firm capacity and energy from renewable generating facilities and small qualifying facilities with a design capacity of 100 kW or less.

5. Rule 25-17.250(1), F.A.C., requires investor-owned utilities to file a separate standard offer contract based on the next avoidable fossil fueled generating unit of each technology type identified in the utility's Ten-Year Site Plan. The rule further provides that "[e]ach investor-owned utility with no planned generating unit identified in its Ten-Year Site Plan shall submit a standard offer based on avoiding or deferring a planned purchase." Rule 25-17.250(1), F.A.C.

6. In Order No. PSC-2017-0295-PAA-EQ, the Commission approved Gulf Power Company's Renewable Standard Offer Contract and accompanying rate schedule REF-1 which was filed with the Commission on April 3, 2017, (the "2017 Standard Offer Contract"). As explained in PSC-2017-0295-PAA-EQ, and consistent with Gulf Power's 2017 Ten-Year Site Plan, Gulf proposed to use a 654 MW natural gas combustion turbine ("CT") generating facility with a projected in-service date of June 1, 2023, as the appropriate unit for purposes of calculating energy and capacity payments under the contract. The Commission approved Gulf's proposal.

7. Gulf Power's most recent Ten-Year Site Plan designates a 595 MW dual-fuel 1-on-1 combined cycle generating facility with an in-service date of June 1, 2024, as the Company's next planned generating unit. Consequently, Gulf Power has designated this facility as the appropriate facility to serve as its avoided unit for use in connection with the new Renewable Standard Offer Contract.

8. Attached to this Petition as Composite Exhibit "A" are clean copies of all tariff sheets comprising Gulf Power's Renewable Standard Offer Contract and Schedule REF-1. Attached to this Petition as Composite Exhibit "B" are copies of Revised Sheet Nos. 9.82, 9.85, 9.86, 9.88, 9.89, 9.97, 9.99, 9.100, 9.101, 9.102, 9.103, 9.104, 9.106, 9.107, 9.108, 9.109, and 9.112 reflecting proposed revisions to the Renewable Standard Offer Contract and Schedule REF-1 in legislative format. Attached to this Petition as Composite Exhibit "C" are the economic/financial assumptions associated with the Combined Cycle capacity proposed as the basis for Gulf's new Renewable Standard Offer Contract.



9. The revisions included in Composite Exhibit "B" reflect current economic and financial assumptions for the avoided unit along with additional ministerial changes that are intended to clarify certain aspects of the contract and rate schedule. The proposed revisions conform to all of the Commission's rules governing standard offers and tariffs including Rules 25-17.200 - 25-17.310, F.A.C.

10. According to Rule 25-17.290, F.A.C., "[a]n investor-owned utility shall not impose any imputed debt equivalent adjustments (equity adjustments) to reduce the avoided costs paid to a renewable generating facility unless the utility has demonstrated the need for the adjustment and obtained the prior approval of the Commission." Gulf Power continues to believe equity adjustments are necessary and appropriate in some instances. Gulf Power is not seeking approval of an equity adjustment at this time. In the event that Gulf Power determines an equity adjustment is necessary in the future, Gulf will return to the Commission for approval pursuant to Rule 25-17.290.

11. Gulf Power is not aware of any disputed issues of material fact relative to the subject matter of this petition.

**WHEREFORE**, Gulf Power respectfully requests that the Commission grant this Petition  
for Approval of its Renewable Standard Offer Contract and rate schedule REF-1.

Respectfully submitted this 2nd day of April 2018.



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(850) 432-2451  
Attorney for Gulf Power Company

# Exhibit A



Section No. IX  
Third Revised Sheet No. 9.81  
Canceling Second Revised Sheet No. 9.81

**STANDARD OFFER CONTRACT RATE FOR PURCHASE OF  
FIRM CAPACITY AND ENERGY FROM A RENEWABLE ENERGY  
FACILITY OR SMALL QUALIFYING FACILITY**  
(Schedule REF-1)

PAGE  
1 of 16

EFFECTIVE DATE  
July 17, 2014

For purposes of this Rate Schedule the term "Renewable Energy Facility" means a facility that produces electrical energy from one or more of the sources stated in Florida Public Service Commission (FPSC) Rule 25-17.210 (1), Florida Administrative Code (F.A.C.). Also, the term "Small Qualifying Facility" means a facility with a design capacity of 100 KW or less as defined in FPSC Rule 25-17.080, F.A.C. Both "Renewable Energy Facility" and "Small Qualifying Facility" are herein referred to as "Facility".

**AVAILABILITY:**

Gulf Power Company (Company) will purchase firm capacity and energy under this schedule from any Facility that produces electrical energy for delivery to the Company, irrespective of its location, which is either directly or indirectly interconnected with the Company under the provisions of this schedule. The offer to purchase such capacity and energy is continuously available to any Facility and will remain open until revised by the Company upon approval of the FPSC or until closed pursuant to FPSC Rule 25-17.250 (2), F.A.C. The Company may negotiate and contract with any Facility, irrespective of its location, which is either directly or indirectly interconnected with the Company for the purchase of firm capacity and energy pursuant to FPSC Rules 25-17.240 and 25-17.0832, F.A.C.

**APPLICABILITY:**

This offer is applicable to any Facility meeting the requirements of FPSC Rules 25-17.210, 25-17.220, and/or 25-17.0832, F.A.C., irrespective of its location, producing capacity and energy for sale to the Company on a firm basis pursuant to the terms and conditions of this schedule and the Company's "Renewable Standard Offer Contract." Firm capacity and energy are described by the FPSC in its Rule 25-17.0832, F.A.C., and are produced and sold by a Facility pursuant to a negotiated or Renewable Standard Offer Contract and subject to certain contractual provisions as to quantity, time, and reliability of delivery.

**CHARACTER OF SERVICE:**

The character of service for purchases from Facilities directly interconnected with the Company shall be, at the option of the Company, single or three phase, 60 hertz, alternating current at any available standard Company voltage. The character of service for purchases from Facilities indirectly interconnected with the Company shall be three phase, 60 hertz, alternating current at the voltage level available at the interchange point between the Company and the utility delivering firm capacity and energy from the Facility.

**ISSUED BY:** S. W. Connally, Jr.



Section No. IX  
Ninth Revised Sheet No. 9.82  
Canceling Eighth Revised Sheet No. 9.82

PAGE	EFFECTIVE DATE
2 of 16	

(Continued from Schedule REF-1, Sheet No. 9.81)

#### LIMITATIONS:

Purchases under this schedule are subject to the Company's "General Standards for Safety and Interconnection of Cogeneration and Small Power Production Facilities to the Electric Utility System" and to FPSC Rules 25-17.080 through 25-17.091, F.A.C., and are limited to those Facilities that:

- A. Beginning upon the date, as prescribed by the FPSC, that a Renewable Standard Offer is deemed available, execute the Company's Renewable Standard Offer Contract for the purchase of firm capacity and energy; and
- B. Commit to commence deliveries of firm capacity and energy no later than the date specified by the Facility's owner or representative, or the anticipated in-service date of the Company's generating facility or purchased power resource ("Avoided Unit or Resource") that is designated herein. Such deliveries will continue for a minimum of ten (10) years from the anticipated in-service date of the Company's Avoided Unit or Resource up to a maximum of the life of the Company's Avoided Unit or Resource.

#### DETERMINATION OF FACILITY'S COMMITTED CAPACITY VALUE

Prior to execution of a Renewable Standard Offer Contract, or negotiated contract, between the Company and a Facility, the Company will determine the Facility's capacity value in relation to the Company's Avoided Unit or Resource during the term of the contract as provided in FPSC Rules 25-17.240 (2), 25-17.250 (1), and 25-17.0832 (3) and (4) F.A.C. The "Committed Capacity" as specified in the Facility's Renewable Standard Offer Contract will be used as the basis for capacity payments to be received by the Facility from the Company during the term of the Renewable Standard Offer Contract. If the Facility elects to make no commitment as to the quantity or timing of its deliveries to the Company, the Committed Capacity in its Renewable Standard Offer will be zero (0) Megawatts, and the capacity rates set in accordance with the provisions of Paragraph A below shall not apply.

#### RATES FOR PURCHASES BY THE COMPANY

Firm capacity is purchased in accordance with the provisions of paragraph A below at a unit cost, in dollars per kilowatt per month, based on the value of the Avoided Unit or Resource that Gulf has designated below for purposes of the Renewable Standard Offer. The Avoided Unit is currently designated as a 595 MW 1-on-1 dual-fuel Combined Cycle with a June 1, 2024 anticipated in-service date. Energy is purchased at a unit cost, in cents per kilowatt-hour, at the Company's energy rates in accordance with the provisions of Paragraph B below.

ISSUED BY: S. W. Connally, Jr.





Section No. IX  
Original Sheet No. 9.83

PAGE	EFFECTIVE DATE
3 of 16	May 22, 2007

(Continued from Schedule REF-1, Sheet No. 9.82)

**A. Firm Capacity Rates**

Four options, 1, 2, 3, and 4, as set forth in this paragraph, are available to calculate payments for firm capacity that is produced by the Facility and delivered to the Company. The capacity payment will be the product of the Facility's Committed Capacity and the applicable rate from the Facility's chosen capacity payment option. Once selected, an option shall remain in effect for the term of the contract with the Company. Tariff Sheet 9.85 contains the monthly rate per kilowatt in accordance with Options 1 through 4, of firm capacity the Facility has contractually committed to deliver to the Company and is based on the minimum contract term for an agreement pursuant to this Rate Schedule which extends ten (10) years after the anticipated in-service date of the Company's Avoided Unit or Resource. Payment schedules for other options specified within will be made available by the Company within thirty days (30) days if requested by a Facility. At a maximum, firm capacity and energy shall be delivered for a period of time equal to the anticipated plant life of the Avoided Unit or Resource, commencing with the anticipated in-service date of the Avoided Unit or Resource.

In addition to capacity payment Options 1 through 4 below, the Facility may elect a payment stream for the capital component of the Company's Avoided Unit or Resource, including front-end loaded capacity payments, that best meets the Facility's financing requirements. Early capacity payments consisting of the capital component of the Company's Avoided Unit or Resource may, at the election of the Facility, commence any time after the actual in-service date of the Facility and before the anticipated in-service date of the Company's Avoided Unit or Resource. Regardless of the payment stream elected by the Facility, the cumulative present value (CPV) of the capital cost payments made to the Facility over the term of the Renewable Standard Offer Contract shall not exceed the CPV of the capital cost payments which would have been made to the Facility pursuant to FPSC Rule 25-17.0832 (4)(g)(1), F.A.C. Fixed operation and maintenance expense shall be calculated in accordance with FPSC Rule 25-17.0832 (6) F.A.C.

Option 1 - Value of Deferral Capacity Payments - Value of Deferral Capacity Payments shall commence on the anticipated in-service date of the Company's Avoided Unit or Resource, provided the Facility is delivering firm capacity and energy to the Company. Capacity payments under this option shall consist of monthly payments, escalating annually, of the avoided capital and fixed operating and maintenance expense associated with the Avoided Unit or Resource, and shall be equal to the value of the year-by-year deferral of the Avoided Unit or Resource, calculated in conformance with the applicable provisions of FPSC Rule 25-17.0832 (4)(g)(1), F.A.C.

Option 2 - Early Capacity Payments - Payment schedules under this option are based on an equivalent net present value of the Value of Deferral Capacity Payments for the Company's Avoided Unit or Resource with an in-service date specified above. The Facility shall select

ISSUED BY: Susan Story



Section No. IX  
Original Sheet No. 9.84

PAGE	EFFECTIVE DATE
4 of 16	May 22, 2007

(Continued from Schedule REF-1, Sheet No. 9.83)

the month and year in which the delivery of firm capacity and energy to the Company is to commence and capacity payments are to start. Early Capacity Payments shall consist of monthly payments, escalating annually, of the avoided capital and fixed operating and maintenance expense associated with the Avoided Unit or Resource. Avoided capacity payments shall be calculated in conformance with the applicable provisions of FPSC Rule 25-17.0832 (4)(g)(2), F.A.C. At the option of the Facility, Early Capacity Payments may commence at any time after the specified earliest capacity payment date and before the anticipated in-service date of the Company's Avoided Unit or Resource provided the Facility is delivering firm capacity and energy to the Company. Where Early Capacity Payments are elected, the cumulative present value of the capacity payments made to the Facility over the term of the contract shall not exceed the cumulative present value of the capacity payments which would have been made to the Facility had such payments been made pursuant to Option 1.

Option 3 - Levelized Capacity Payments - Levelized Capacity Payments shall commence on the anticipated in-service date of the Company's Avoided Unit or Resource, provided the Facility is delivering firm capacity and energy to the Company. The capital portion of the capacity payment under this option shall consist of equal monthly payments over the term of the contract, calculated in accordance with the applicable provisions of FPSC Rule 25-17.0832 (4)(g)(3), F.A.C. The fixed operation and maintenance portion of the capacity payment shall be equal to the value of the year-by-year deferral of fixed operation and maintenance expense associated with the Company's Avoided Unit or Resource. Where Levelized Capacity Payments are elected, the cumulative present value of the capacity payments made to the Facility over the term of the contract shall not exceed the cumulative present value of the capacity payments which would have been made to the Facility had such payment been made pursuant to Option 1.

Option 4 - Early Levelized Capacity Payments - Payment schedules under this option are based on an equivalent net present value of the Value of Deferral Capacity Payments for the Company's Avoided Unit or Resource with an in-service date specified above. The capital portion of the capacity payment under this option shall consist of equal monthly payments over the term of the contract, calculated in accordance with the applicable provisions of FPSC Rule 25-17.0832 (4)(g)(4), F.A.C. The fixed operation and maintenance portion of the capacity payments shall be equal to the value of the year-by-year deferral of fixed operation and maintenance expense associated with the Company's Avoided Unit or Resource. At the option of the Facility, Early Levelized Capacity Payments shall commence at any time after the specified earliest capacity payment date and before the anticipated in-service date of the Company's Avoided Unit or Resource provided the Facility is delivering firm capacity and energy to the Company. The Facility shall select the month and year in which the delivery of firm capacity and energy to the Company is to commence and capacity payments are to start. Where Early Levelized Capacity Payments are elected, the cumulative present value of the

ISSUED BY: Susan Story





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capacity payments made to the Facility over the term of the contract shall not exceed the cumulative present value of the capacity payments which would have been made to the Facility had such payments been made pursuant to Option 1.

All capacity payments made by the Company prior to the anticipated in-service date of the Company's Avoided Unit or Resource are considered "Early Payments". The owner, owner's representative, or operator of the Facility, as designated by the Company, shall secure its obligation to repay, with interest, the accumulated amount of Early Payments to the extent that the cumulative present value of the capacity payments made to the Facility over the term of the contract exceeds the cumulative present value of the capacity payments which would have been made to the Facility had such payments been made pursuant to Option 1, or to the extent that annual firm capacity payments made to the Facility in any year exceed that year's annual value of deferring the Company's Avoided Unit or Resource in the event the Facility defaults under the terms of its Renewable Standard Offer Contract with the Company. The Company will provide to the Facility monthly summaries of the total outstanding balance of such security obligations. A summary of the types of security instruments which are generally acceptable to the Company is set forth in Paragraph C of the SPECIAL PROVISIONS Section below.

**MONTHLY CAPACITY PAYMENT RATE (MCR)  
BASED ON GULF'S CURRENTLY SPECIFIED  
AVOIDED UNIT OR RESOURCE**

<u>June - May Contract Period</u>	<u>Option 1 Normal \$/KW-MO</u>	<u>Option 2 Early \$/KW-MO</u>	<u>Option 3 Levelized \$/KW-MO</u>	<u>Option 4 Early Levelized \$/KW-MO</u>
2018 to 2019	0.00	5.45	0.00	5.92
2019 to 2020	0.00	5.56	0.00	5.96
2020 to 2021	0.00	5.68	0.00	6.01
2021 to 2022	0.00	5.80	0.00	6.05
2022 to 2023	0.00	5.92	0.00	6.10
2023 to 2024	0.00	6.05	0.00	6.15
2024 to 2025	11.87	6.18	12.50	6.20
2025 to 2026	12.06	6.31	12.54	6.24
2026 to 2027	12.25	6.44	12.57	6.30
2027 to 2028	12.45	6.57	12.61	6.35
2028 to 2029	12.65	6.71	12.65	6.40
2029 to 2030	12.85	6.85	12.69	6.45
2030 to 2031	13.06	7.00	12.73	6.51
2031 to 2032	13.27	7.15	12.77	6.56
2032 to 2033	13.49	7.30	12.81	6.62
2033 to 2034	13.71	7.45	12.85	6.68

ISSUED BY: S. W. Connally, Jr.



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The capacity payment for a given month will be added to the energy payment for such month and tendered by the Company to the Facility as a single payment as promptly as possible, normally by the twentieth business day following the day the meter is read.

**B. Energy Rates**

If the Facility's Committed Capacity is zero (0), the Company agrees to pay the Facility for energy delivered to the Company in accordance with the rate calculation described in the Company's Rate Schedule COG-1 as it may be amended from time to time. If the Facility's Committed Capacity is greater than zero (0), the Company agrees to pay the Facility for energy delivered to the Company in accordance with the provisions of Section B (1)-(3) below:

1. Payments Starting On In-Service Date of Avoided Unit or Resource: The Facility shall be paid at the Avoided Unit or Resource's energy rate for all energy delivered to the Company during each hour of the monthly billing period in which the Avoided Unit or Resource would have operated had the unit been installed. For each hour of the monthly billing period in which the Avoided Unit or Resource would not have operated, the Facility shall be paid for all energy delivered to the Company during that hour at the lesser of the Company's As-Available energy rate as described in its Rate Schedule COG-1, Sheet 9.3 or the Avoided Unit or Resource's energy rate.

The Avoided Unit or Resource's energy rate, in cents per kilowatt-hour, shall be the product of the Avoided Unit or Resource's applicable fuel cost and heat rate, plus the applicable variable operation and maintenance expense. All energy purchases shall be adjusted for losses from the point of metering to the point of interconnection.

2. Payments Prior To In-Service Date of Avoided Unit or Resource: The Company's As-Available energy rate, as described in Rate Schedule COG-1, Sheet 9.3, will be applied to all energy delivered by the Facility to the Company prior to the Avoided Unit or Resource's in-service date. As-available energy payments to the Facility shall be based on the sum, over all hours of the monthly billing period in which the Facility delivers energy to the Company, of the product of each hour's As-Available energy rate times the energy received by the Company during that hour. All energy purchases shall be adjusted for losses from the point of metering to the point of interconnection.
3. Fixed Energy Payments: Upon request by the Facility, the Company will provide the following fixed payment options for energy delivered to the Company.
  - a. As-Available energy payments made prior to the Avoided Unit or Resource's in-service date shall be based on the Company's year-by-year projection of system incremental fuel costs, prior to hourly economy energy sales to other utilities, based on normal weather and fuel market conditions. A fuel market volatility risk premium may be added to the energy payments upon mutual agreement between Company and Facility regarding the method or mechanism for determining such risk premium.

ISSUED BY: S. W. Connally, Jr.





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- b. Firm Energy Payments: Subsequent to the determination of full avoided cost and subject to provisions of FPSC Rule 25.17-0832 (3) (a) through (d), a mutually agreed portion of the Avoided Unit or Resource's base energy costs shall be fixed and amortized on a present value basis over the term of the contract starting as early as the in-service date of the Facility. Base energy costs associated with the Avoided Unit or Resource shall mean the energy costs that would have resulted had the Avoided Unit or Resource been operated.

#### PERFORMANCE CRITERIA

Payments from the Company for firm capacity are conditioned on the Facility's ability to maintain the following performance criteria:

A. Commercial In-Service Date

Capacity payments shall not commence until the Facility has attained and demonstrated, commercial in-service status. The commercial in-service date of a Facility shall be defined as the first day of the month following the successful completion of a test in which the Facility maintains an hourly kilowatt (KW) output, as metered at the point of interconnection with the Company, equal to or greater than the Facility's Committed Capacity specified in its Renewable Standard Offer Contract for an entire test period. A Facility shall coordinate the selection of the test period with the Company to ensure that the performance of the Facility during this period is reflective of day-to-day operational conditions likely to be experienced by the Company's Avoided Unit or Resource if it were to be in actual operation during a similar period.

B. Facility Capacity Availability Requirement

Payments for firm capacity shall be made monthly in accordance with the capacity payment rate option selected by the Facility, subject to the condition that, beginning on the Avoided Unit or Resource's in-service date and continuing through the remainder of the contract term, the Facility maintains the minimum Equivalent Availability Factor (EAF) that is defined in the ANNUAL CAPACITY AVAILABILITY FACTOR DETERMINATION Section below for each 12 month performance period ending August 31. Failure to satisfy this availability requirement shall result in an obligation for repayment by the Facility of an amount calculated in accordance with the Capacity Repayment procedure contained in Paragraph A of the ANNUAL CAPACITY AVAILABILITY FACTOR DETERMINATION Section below.

ISSUED BY: Susan Story





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Fifth Revised Sheet No. 9.88  
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For the first performance period of the Renewable Standard Offer Contract, the repayment obligation shall be determined as below, except that the period for which the availability requirement applies and which is subject to repayment shall begin on the Avoided Unit or Resource's in-service date and end on the August 31 immediately following the Avoided Unit or Resource's in-service date.

In addition to the foregoing, when early capacity payments have been elected and received, the failure of the Facility to satisfy the availability requirement set forth below shall also result in an obligation for additional repayments by the Facility to the Company. The amount of such additional repayment shall be equal to the difference between: (1) what the Facility would have been paid during the previous twelve months ending August 31 had it elected the normal payment option; and (2) what it was paid pursuant to the payment option selected. Prior to the in-service date of the Avoided Unit or Resource, all performance requirements as listed in Paragraph B of the following Section will apply at the time initial capacity and energy deliveries from the Facility commence.

#### ANNUAL CAPACITY AVAILABILITY FACTOR DETERMINATION

In October following each performance period, the Company will calculate the availability of the Facility over the most recent twelve month performance period ending August 31. For purposes of this Schedule, the annual capacity availability is determined using the NERC Generation Availability Data System (GADS) formula for EAF that is shown below. The Facility will be entitled to retain capacity payments received during the annual period if an EAF of 88% is maintained for each performance period. If the Facility fails to maintain this EAF, then the Facility will repay the Company a portion of the performance period capacity payments as calculated in accordance with the procedure in Paragraph A.

$$EAF = \{ [ AH - (EUDH + EPDH + ESEDH) ] / PH \} \times 100 (\%) \text{ where,}$$

AH = Available Hours  
Sum of all SH, RSH, Pumping Hours, and Synchronous Condensing Hours.

EPDH = Equivalent Planned Derated Hours  
Product of the Planned Derated Hours and the Size of Reduction, divided by the NMC.

ESEDH = Equivalent Seasonal Derated Hours  
NMC less the NDC, times the Available Hours (AH), divided by the NMC.

EUDH = Equivalent Unplanned Derated Hours  
Product of the Unplanned Derated Hours and the Size of Reduction, divided by the NMC.

ISSUED BY: S. W. Connally, Jr.



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- NDC = Net Dependable Capacity  
NMC modified for ambient limitations.
- NMC = Capacity a unit can sustain over a specified period when not restricted by ambient conditions or equipment deratings, minus the losses associated with station service or auxiliary loads.
- PH = Period Hours  
Number of hours a unit was in the active state. A unit generally enters the active state on its commercial date.
- RSH = Reserve Shutdown Hours  
Total number of hours the unit was available for service but not electrically connected to the transmission system for economic reasons.
- SH = Service Hours  
Total number of hours a unit was electrically connected to the transmission system.

A. Capacity Repayment Calculation

The following conditions will determine the amount of the Facility's Capacity Repayment obligation:

1. If EAF is greater than or equal to 88%, then;  
$$\text{Capacity Repayment (CR)} = 0$$
2. If EAF is less than 88% but equal to or greater than 60%, then;  
$$\text{CR} = [\text{Monthly Capacity Rate (MCR)} \times \text{Committed Capacity (CC)} \times \text{Months in Performance Period (MPP)} \times ((88 - \text{EAF}) / 88)]$$
3. If EAF is less than 60%, then;  
$$\text{CR} = \text{MCR} \times \text{CC} \times \text{MPP}$$

B. Additional Performance Criteria

1. The Facility shall provide monthly generation estimates by October 1 for the next calendar year; and
2. The Facility shall promptly update its yearly generation schedule when any changes are determined necessary; and

ISSUED BY: S. W. Connally, Jr.



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3. The Facility shall agree to reduce generation or take other appropriate action as requested by the Company for safety reasons or to preserve system integrity; and
4. The Facility shall coordinate scheduled outages with the Company; and
5. The Facility shall comply with the reasonable requests of the Company regarding daily or hourly communications and;
6. The Facility must promptly notify the Company of its inability to supply any portion of its full Committed Capacity from the Facility. Failure of the Facility to notify the Company of a known derating or inability to meet its Committed Capacity obligation may, at the sole discretion of the Company, result in a determination of non-performance.

#### DELIVERY VOLTAGE ADJUSTMENT

Energy payments to Facilities directly interconnected with the Company shall be adjusted according to the delivery voltage by dividing the energy delivered at that voltage by the following factors:

Transmission Voltage Delivery	1.01801#
Substation Voltage Delivery	1.03208##
Primary Voltage Delivery	1.05862###
Secondary Voltage Delivery	1.08576####

- # Any Facility interconnected at a voltage of 46 KV or above.
- ## Any Facility interconnected at a voltage on the low side of a substation below 46 KV and above 4 KV. This substation, where the Facility takes electricity on the low side, shall have transmission voltage on the high side (115, 69, or 46 KV) and distribution voltage on the low side (25, 12, or 4 KV).
- ### Any Facility interconnected at a distribution voltage, 4 to 25 KV inclusive.
- #### Any Facility interconnected at a voltage below 4 KV.

#### METERING REQUIREMENTS

Facilities directly interconnected with the Company shall pay the Company for meters required hereunder. Hourly demand recording meters shall be required for each individual generator unit comprising a Facility with a total installed capacity of 100 KW or more. Where the total installed capacity of the Facility is less than 100 KW, the Facility may select from either hourly demand recording meters, dual kilowatt-hour register time-of-day meters or standard kilowatt-hour meters. Meters shall be installed to measure the energy production from each generating unit of the

ISSUED BY: Mark Crosswhite





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Facility as well as net delivered energy at the point of interconnection. Purchases from Facilities indirectly interconnected with the Company shall be measured as the quantities scheduled for interchange to the Company by the utility delivering firm capacity and energy to the Company.

#### BILLING OPTIONS

The Facility may elect to make either simultaneous purchases and sales or net sales. The decision to change billing methods can be made once every twelve (12) months coinciding with the next Fuel and Purchased Power Cost Recovery Factor billing period providing the Company is given at least thirty days written notice before the change is to take place. In addition, allowance must be made for the installation or alteration of needed metering or interconnection equipment for which the Facility must pay; and such purchases and/or sales must not abrogate any provisions of the tariff or contract with the Company.

A statement covering the charges and payments due the Facility is rendered monthly, and payment normally is made by the twentieth business day following the end of the billing period.

#### CHARGES TO THE FACILITY

##### A. Base Charges

Monthly base charges for meter reading, billing and other applicable administrative costs shall be equal to the base charge applicable to a customer receiving retail service under similar load characteristics.

##### B. Interconnection Charge for Non-Variable Utility Expenses

The Facility, in accordance with Rule 25-17.087, F.A.C., shall bear the cost required for interconnection including the cost of metering and the cost of accelerating construction of any transmission or distribution system improvements required in order to accommodate the location chosen by the Facility. The Facility shall have the option of payment in full for interconnection or making equal monthly installment principle payments over a thirty-six (36) month period plus interest at the thirty (30) day commercial paper rate.

ISSUED BY: S. W. Connally, Jr.



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C. Interconnection Charge for Variable Utility Expenses

The Facility shall be billed monthly for the cost of variable utility expenses associated with the operation and maintenance of the interconnection. These include (a) the Company's inspections of the interconnection, and (b) maintenance of any equipment beyond that which would be required to provide normal electric service to the Facility if no sales to the Company were involved.

D. Taxes and Assessments

The Facility shall hold the Company and its general body of ratepayers harmless from the effects of any additional taxes, assessments or other impositions that arise as a result of the purchase of energy and capacity from the Facility in lieu of other energy and capacity. Any savings in regards to taxes or assessments shall be included in the avoided cost payments made to the Facility to the extent permitted by law. In the event the Company becomes liable for additional taxes, assessments or impositions arising out of its transactions with the Facility under this tariff schedule or any related interconnection agreement or due to changes in laws affecting the Company's purchases of energy and capacity from the Facility occurring after the execution of an agreement under this tariff schedule and for which the Company would not have been liable if it had produced the energy and/or constructed facilities sufficient to provide the capacity contemplated under such agreement itself, the Company may bill the Facility monthly for such additional expenses or may offset them against amounts due to the Facility from the Company. Any savings in taxes, assessments or impositions that accrue to the Company as a result of its purchase of energy and capacity under this tariff schedule that are not already reflected in the avoided energy or avoided capacity payments made to the Facility hereunder, shall be passed on to the Facility to the extent permitted by law without consequential penalty or loss of such benefit to the Company.

**TERMS OF SERVICE**

- A. It shall be the Facility's responsibility to inform the Company of any change in its electric generation capability.
- B. Any electric service delivered by the Company to the Facility shall be metered separately and billed under the applicable retail rate schedule and the terms and conditions of the applicable rate schedule shall pertain.
- C. A security deposit will be required in accordance with FPSC Rules 25-17.082(5) and 25-6.097, F.A.C. and the following:
  - 1. In the first year of operation, the security deposit shall be based upon the singular month in which the Facility's projected purchases from the Company exceed, by the greatest

ISSUED BY: S. W. Connally, Jr.





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- amount, the Company's estimated purchases from the Facility. The security deposit should be equal to twice the amount of the difference estimated for that month. The deposit shall be required upon interconnection.
2. For each year thereafter, a review of the actual sales and purchases between the Facility and the Company shall be conducted to determine the actual month of maximum difference. The security deposit shall be adjusted to equal twice the greatest amount by which the actual monthly purchases by the Facility exceed the actual sales to the Company in that month.
- D. The Company shall specify the point of interconnection and voltage level.
  - E. Facilities directly interconnected with the Company shall be required to sign the Company's filed Standard Interconnection Agreement in order to engage in parallel operations with the Company. The Facility shall recognize that its generation equipment and other related infrastructure may have unique interconnection requirements which will be separately addressed by modifications to the Company's General Standards for Safety and Interconnection where applicable.
  - F. Facilities indirectly interconnected with the Company are required to make all arrangements needed to deliver the capacity and energy purchased from the Facility by the Company to the Company's interchange point with the delivering utility.
  - G. Service under this Schedule is subject to the rules and regulations of the Company and the FPSC as well as other applicable federal and state legislation or regulations.

#### SPECIAL PROVISIONS

- A. Special contracts deviating from the above Schedule are allowable provided they are agreed to by the Company and approved by the FPSC.
- B. A Facility directly interconnected with the Company may sell firm capacity and energy to a utility other than the Company. Where such agreements exist, the Company will provide transmission wheeling service to deliver the Facility's power to the purchasing utility or to an intermediate utility. In addition, the Company will provide transmission wheeling service through its territory for a Facility indirectly interconnected with the Company, for delivery of the Facility's power to the purchasing utility or to an intermediate utility. In either case, where existing Company transmission capacity exists, the Company will impose a charge for wheeling Facility capacity and energy, measured at the point of delivery to the Company.

The Facility shall be responsible for all costs associated with such wheeling including:

1. Wheeling charges;
2. Line losses incurred by the Company; and
3. Inadvertent energy flows resulting from such wheeling.

ISSUED BY: Mark Crosswhite



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Energy delivered to the Company shall be adjusted before delivery to another utility.

Interstate transactions are defined as those determined to be in the jurisdiction of the Federal Energy Regulatory Commission (FERC).

Capacity delivered to the Company shall be adjusted before delivery to another utility. The following estimated adjustment factors are supplied for informational purposes only:

<u>Renewable Facility Delivery Voltage</u>	<u>Adjustment Factor</u>
Transmission Voltage Delivery	0.96758
Substation Voltage Delivery	0.94103
Primary Distribution Voltage Delivery	0.91001

All charges and adjustments for wheeling will be determined on a case-by-case basis.

Where wheeling power produced by a Facility for delivery to the Company or to another utility will impair the Company's ability to give adequate service to the rest of the Company's customers or place an undue burden on the Company, the Company may petition the FPSC for a waiver of this Special Provision B, or require the Facility to pay for the necessary transmission system improvements in accordance with the National Energy Policy Act of 1992, or other applicable Federal law.

In order to establish the appropriate transmission service arrangements, the Facility must contact:

Manager Transmission Services  
Southern Company Services  
Post Office Box 2625  
Birmingham AL 35202

- C. As a means of protecting the Company's customers from the possibility of a Facility not coming on line as provided for under an executed Renewable Standard Offer Contract and in order to provide the Company with additional and immediately available funds for its use to secure replacement and reserve power in the event that the Facility fails to successfully complete construction and come on line in accord with the executed Renewable Standard Offer Contract, the Company requires that a cash completion security deposit equal to \$20 per kw of the nameplate capacity of the Facility's generator unit(s) at the time the Company's Renewable Standard Offer Contract is executed by the Facility. At the election of the Facility, the completion security deposit may be phased in such that one half of the total deposit due is paid at contract execution and the remainder within 12 months after contract execution.

ISSUED BY: Mark Crosswhite



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Depending on the nature of the Facility's operation, financial health and solvency, and its ability to meet the terms and conditions of the Company's Renewable Standard Offer Contract, one of the following, at the Company's discretion, may be used as an alternative to a cash deposit as a means of securing the completion of the Facility's project in accord with the executed Renewable Standard Offer Contract:

1. an unconditional, irrevocable direct pay letter; or
2. surety bond; or
3. other means acceptable to the Company.

The Company will cooperate with each Facility seeking an alternative to a cash security deposit as an acceptable means of securing the completion of the Facility's installation in accord with an executed Renewable Standard Offer Contract. The Company will endeavor in good faith to accommodate an equivalent to a cash security deposit which is in the best interests of both the Facility and the Company's customers.

In the case of a governmental solid waste Facility, pursuant to Subsection 366.91 (3), Florida Statutes and FPSC Rule 25-17.091, F.A.C., the following will be acceptable to the Company:

The unsecured promise of a municipal, county, or state government that it will pay the actual damages incurred by the Company because the governmental Facility fails to come on line prior to the planned in-service date for the Avoided Unit or Resource.

- D. Election of Early Capacity Payments under an Option other than (1) through (4) above, and/or election of the Fixed Energy Payments will result in the Company's immediate re-evaluation of the completion security requirements as addressed above in order to determine the adequacy of such security instruments. Given the terms and conditions ultimately set in the Renewable Standard Offer Contract, additional security requirements may be specified by the Company.

ISSUED BY: Susan Story





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- E. The Company, in evaluating the viability of any particular offer may exercise its rights under FPSC Rule 25-17.0832(4)(c)(2)(b), F.A.C.
- F. In the event that the Facility decides to sell any or all Renewable Energy Certificates, Green Tags, or other tradable environmental interests (collectively "Environmental Interests") that result from the electric generation of the Facility during the term of an executed Renewable Standard Offer Contract, the Facility shall provide notice to the Company of its intent to sell such Environmental Interests and provide the Company a reasonable opportunity to offer to purchase such Environmental Interests.
- G. All Renewable Standard Offer Contracts for the purchase of capacity and energy from a Facility shall include a provision to reopen the contract, at the election of either party, limited to changes affecting the Company's full avoided costs of the unit on which the Renewable Standard Offer Contract is based as a result of new environmental or other regulatory requirements enacted during the term of the contract.

ISSUED BY: Susan Story





Section No. IX  
Fifth Revised Sheet No. 9.97  
Canceling Fourth Revised Sheet No. 9.97

**STANDARD OFFER CONTRACT FOR PURCHASE OF FIRM  
CAPACITY AND ENERGY FROM A RENEWABLE ENERGY  
FACILITY OR SMALL QUALIFYING FACILITY  
("RENEWABLE STANDARD OFFER CONTRACT")**

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THIS AGREEMENT is made and entered into this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_ by  
and between \_\_\_\_\_, hereinafter referred to as the "Seller"; and  
Gulf Power Company, a corporation, hereinafter referred to as the "Company". The Seller and the  
Company shall collectively be referred to herein as the "Parties".

**WITNESSETH:**

WHEREAS, for purposes of this contract, the term "Renewable Energy Facility" means a  
facility that produces electrical energy from one or more of the sources stated in Florida Public  
Service Commission (FPSC) Rule 25-17.210 (1), Florida Administrative Code (F.A.C.), and the  
term "Small Qualifying Facility" means a facility with a design capacity of 100 KW or less as  
defined in FPSC Rule 25-17.080, F.A.C., thus, both "Renewable Energy Facility" and "Small  
Qualifying Facility" are herein referred to as "Facility"; and

WHEREAS, the Seller desires to sell, and the Company desires to purchase, firm capacity  
and energy, or energy only, to be generated by the Facility, such sale and purchase to  
be consistent with FPSC Rules 25-17.080 through 25-17.091; and

WHEREAS, the Seller, in accordance with FPSC Rule 25-17.087, F.A.C., has entered into an  
interconnection agreement with the utility that the Facility is directly interconnected, attached  
hereto as Appendix A; and

WHEREAS, the FPSC has approved the following standard contract for use in the acceptance  
of the Company's standard offer for the purchase of firm capacity and energy, or energy only,  
from Facilities.

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

ISSUED BY: S. W. Connally, Jr.



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1. Facility

The Seller either contemplates installing and operating or has installed and is operating a Facility comprised in whole or in part of the following generator units located at

\_\_\_\_\_:

Unit	Description (Type)	Initial In-Service Date	KVA Nameplate Rating	KW Output Rating	Fuel Source	
					Primary	Secondary
_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____
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ISSUED BY: S. W. Connally, Jr.



Section No. IX  
Sixth Revised Sheet No. 9.99  
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(Continued from Standard Offer Contract, Sheet No. 9.98)

The entire Facility, whether comprised in whole or in part of the generator units set forth above, is designed to produce a maximum of \_\_\_\_\_ kilowatts (KW) of electric power at an 85% power factor.

2. Term of the Agreement

This Agreement shall begin immediately upon its execution and the contemporaneous payment by the Seller to the Company of a completion security deposit in the amount of \$20.00 times each KW of nameplate capacity of the Facility's generator unit(s). This Agreement shall end at 12:01 A.M., \_\_\_\_\_, 20\_\_\_\_ (date specified shall be no earlier than May 31, 2034).

Notwithstanding the foregoing, if construction and commercial operation of the Facility are not accomplished before June 1, 2024, the Company's obligations to the Seller under this Agreement shall be considered to be of no force and effect. The Company shall be entitled to retain and use the funds required by the Company as a completion security deposit under this section of the Agreement.

At the election of the Seller, the completion security deposit may be phased in such that one half of the total deposit due is paid upon contract execution and the remainder is to be paid within 12 months after contract execution. If the Seller elects to phase in payment of the completion security deposit due under this paragraph, the effective date of the contract shall be the date of execution provided, however, that the Company shall have no further obligation to the Seller if either installment of the completion security deposit is not timely received by the Company.

ISSUED BY: S. W. Connally, Jr.



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(Continued from Standard Offer Contract, Sheet No. 9.99)

Depending on the nature of the Facility's operation, financial health and solvency, and its ability to meet the terms and conditions of this Agreement, one of the following, at the Company's discretion in accordance with the provisions of Schedule REF-1, may be used as an alternative to a cash deposit as a means of securing the completion of the project in accord with this Agreement:

- (a) an unconditional, irrevocable direct pay letter; or
- (b) surety bond; or
- (c) other means acceptable to the Company.

In the case of a governmental solid waste facility, pursuant to FPSC Rule 25-17.091, F.A.C., the following will be acceptable to the Company: the unsecured promise of a municipal, county, or state government to pay the actual damages incurred by the Company because the governmental facility fails to come on line prior to June 1, 2024.

The specific completion security vehicle agreed upon by the parties is: \_\_\_\_\_

(IN ORDER FOR THIS FORM OF CONTRACT TO BE USED TO TENDER ACCEPTANCE OF THE COMPANY'S STANDARD OFFER BY A SELLER OTHER THAN A GOVERNMENTAL SOLID WASTE FACILITY, THE ABOVE LINE MUST SPECIFY CASH DEPOSIT IN THE APPROPRIATE AMOUNT UNLESS THE SELLER HAS SECURED THE PRIOR WRITTEN CONSENT FROM THE COMPANY TO AN ALTERNATIVE COMPLETION SECURITY VEHICLE.)

3. Sale of Electricity by the Facility

The Company agrees to purchase firm capacity and energy generated at the Facility and transmitted to the Company by the Facility. The purchase and sale of firm capacity and energy pursuant to this Agreement shall be in accordance with the following billing methodology (choose one):

- ( ) Net Billing Arrangement; or
- ( ) Simultaneous Purchase and Sales Arrangement.

ISSUED BY: S. W. Connally, Jr.





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Third Revised Sheet No. 9.101  
Canceling Second Revised Sheet No. 9.101

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The billing methodology chosen above may not be changed except in accordance with and subject to the following provisions of Rules 25-17.082 and 25-17.0832 F.A.C.:

- (a) when a Facility selling as-available energy enters into a negotiated contract or standard offer contract for the sale of firm capacity and energy; or
- (b) when a firm capacity and energy contract expires or is lawfully terminated by either the Facility or the purchasing utility; or
- (c) when the Facility is selling as-available energy and has not changed billing methods within the last twelve months; and
- (d) upon at least thirty days advance written notice to the Company;
- (e) upon the installation of any additional metering equipment reasonably required to effect the change in billing and upon payment by the Facility for such metering equipment and its installation;
- (f) upon completion and approval of any alterations to the interconnection reasonably required to effect the change in billing and upon payment by the Facility for such alterations; and
- (g) where the election to change billing methods will not contravene the provisions of Rule 25-17.0832 or the tariff under which the Facility receives electrical service, or any previously agreed upon contractual provision between the Facility and the Company.

4. Payment for Electricity Produced by the Facility

4.1 Energy

The Company agrees to pay the Seller for energy the Facility produces and delivers for sale to the Company. If the Facility's Committed Capacity in Paragraph 4.2.1 and Paragraph 4.2.2 is zero (0), the Company agrees to pay the Facility for energy delivered to the Company in accordance with the rate calculation described in the Company's Rate Schedule COG-1, as it may be amended from time to time. If the Facility's Committed Capacity is greater than zero (0), the purchase and sale of energy pursuant to this Agreement shall be in accordance with the rates and procedures contained in Paragraph B of the **RATES FOR PURCHASES BY THE COMPANY** section of Schedule REF-1 as it exists at the time this Agreement is properly submitted by the Seller to the Company as tendered acceptance of the Company's Standard Offer.

ISSUED BY: S. W. Connally, Jr.



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For all energy delivered by the Facility to the Company and to the extent applicable, the Seller elects to be paid pursuant to the method described in:

- ☐ Paragraph B (1), or
- ☐ Paragraph B (3)(b),  
and (if applicable);
- ☐ Paragraph B (2), or
- ☐ Paragraph B (3)(a)

of the **RATES FOR PURCHASES BY THE COMPANY** section of Schedule REF-1. If the Seller elects any payment method under Paragraph B (3), the details underlying the derivation of the associated energy payments will be described in an exhibit to this Standard Offer Contract. The Company will provide the Seller an energy payment schedule for the elected payment method within thirty (30) days after receipt of a Seller's request for such information.

#### 4.2 Capacity

4.2.0 No Committed Capacity. If the Facility elects to make no commitment as to the quantity or timing of its deliveries to the Company, the Committed Capacity in this Renewable Standard Offer Contract will be zero (0) Megawatts, and the capacity rates set in accordance with the provisions of Paragraph 4.2.1 through Paragraph 4.2.3, Paragraph 7, and Paragraph 8 shall not apply.

4.2.1 Anticipated Committed Capacity. The Facility is expected to deliver approximately \_\_\_\_\_ kilowatts of capacity, beginning on or about \_\_\_\_\_, 20\_\_\_\_.  
(Date specified may not be later than June 1, 2024.)

The Facility may finalize its Committed Capacity (CC) after initial facility testing, and specify when capacity payments are to begin, by completing Paragraph 4.2.2 at a date subsequent to the execution of this Agreement by the parties. However, the Seller must complete Paragraph 4.2.2 before June 1, 2024 in order to be entitled to any capacity payments pursuant to this Agreement. The final Committed Capacity set forth in Paragraph 4.2.2 shall not exceed plus or minus ten percent of the above estimate. The date specified in Paragraph 4.2.2 as the date on which capacity payments shall begin shall be no earlier than the date specified above, nor any later than June 1, 2024.

ISSUED BY: S. W. Connally, Jr.



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4.2.2 Actual Committed Capacity. The capacity committed by the Facility (Committed Capacity or CC) for the purposes of this Agreement is \_\_\_\_\_ kilowatts beginning \_\_\_\_\_, \_\_\_\_\_. The Seller is committing this amount of capacity based on its agreement and commitment that this capacity will maintain an Equivalent Availability Factor (EAF) of 88%. The EAF will be based on the economic operation of a Combined Cycle generating facility (Avoided Unit) that Gulf has designated as the Avoided Unit for purposes of the Standard Offer. The Seller elects to receive, and the Company agrees to commence calculating, capacity payments in accordance with this Agreement starting with the first billing month following the date specified in this paragraph as the date on which capacity sales under this Agreement will begin.

4.2.3 Capacity Payments. The Seller chooses to receive capacity payments from the Company under Option \_\_\_\_\_ or \_\_\_\_\_ a customized payment stream as described in the Company's Schedule REF-1 of the Company Tariff for Retail Electric Service as it exists at the time this Agreement is properly submitted by the Seller to the Company as tendered acceptance of the Company Standard Offer. If the customized payment option is chosen by the Seller as the preferred capacity payment option, the details underlying the derivation of such payment stream will be described in an exhibit to this Standard Offer Contract.

The Capacity Payments to be made by the Company to the Seller are based upon the Avoided Unit that the Company has designated for purposes of the Standard Offer. The Capacity Payments to the Seller are based on an avoided dual-fuel 1-on-1 Combined Cycle generating facility with the following economic assumptions:

Size: 595 MW total	Installed Costs (2024): \$1,223/kW
Discount Rate: 7.26%	AFUDC Rate: 7.90%
Annual Inflation: 2.09%	K-factor: 1.2510
Annual Capacity Factor: 78.0%	Fixed O & M: \$55.93/kW-yr
Equivalent Availability: 88%	Unit Life: 40 years

ISSUED BY: S. W. Connally, Jr.





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The Company agrees it will pay the Seller a capacity payment. This capacity payment will be the product of the Facility's Committed Capacity and the applicable rate from the Seller's chosen capacity payment option in accordance with the Company's Schedule REF-1, as it exists at the time this Agreement is properly submitted by the Seller to the Company as tendered acceptance of the Company's Standard Offer. In the event either: (1) the date specified in Section 2 of this Agreement is later than June 1, 2034; or (2) the date specified in Paragraph 4.2.2 as the date capacity payments are to begin is one other than the dates shown in Schedule REF-1, a payment schedule will be calculated by the Company and attached to this agreement as Exhibit D. Under those circumstances, the payment schedule set forth in Exhibit D will be used in the calculation of capacity payments pursuant to this paragraph. The Company will provide the Seller a capacity payment schedule for the chosen payment method within thirty (30) days after receipt of a Seller's request for such information. The capacity payment for a given month will be added to the energy payment for such month and tendered by the Company to the Seller as a single payment as promptly as possible, normally by the twentieth business day following the day the meter is read.

In October following each performance period, the Company will calculate the availability of the Facility over the most recent twelve month period ending August 31. For purposes of this Agreement, availability means Equivalent Availability Factor (EAF) as defined by the North American Electric Reliability Council Generating Availability Data System (NERC GADS) or its successor's indice. If the availability (EAF) of the Facility is not equal to or greater than 0.88 (88%), then the Seller will repay the Company a portion of the performance period capacity payments as calculated in accordance with the procedure detailed in the **ANNUAL CAPACITY AVAILABILITY FACTOR DETERMINATION** section of Rate Schedule REF-1.

ISSUED BY: S. W. Connally, Jr.





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Repayment under this paragraph shall not be construed as a limitation of the Company's right to pursue a claim against the Seller in any appropriate court or forum for the actual damages the Company incurs as a result of non-performance or default.

5. Metering Requirements

Hourly demand recording meters shall be required for each individual generator unit comprising a Facility with a total installed capacity of 100 kilowatts or more. Where the total installed capacity of the facility is less than 100 kilowatts, the Facility may select any one of the following options (choose one):

- ☐ hourly demand recording meter(s);
- ☐ dual kilowatt-hour register time-of-day meter(s); or
- ☐ standard kilowatt-hour meter(s).

Unless special circumstances warrant, meters shall be read at monthly intervals on the approximate corresponding day of each meter reading period.

6. Electricity Production Schedule

During the term of this Agreement, the Seller agrees to:

- (a) Adjust reactive power flow in the interconnection so as to remain within the range of 85% leading to 85% lagging power factor;
- (b) Provide the Company, prior to October 1 of each calendar year (January through December), an estimate of the amount of firm capacity and energy to be generated by the Facility and delivered to the Company for each month of the following calendar year including the time, duration and magnitude of any planned outages or reductions in capacity;
- (c) Promptly update the yearly generation schedule and maintenance schedule as and when any changes may be determined necessary;
- (d) Coordinate its scheduled Facility outages with the Company;

ISSUED BY: S. W. Connally, Jr.



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- (e) Comply with reasonable requirements of the Company regarding day-to-day or hour-by-hour communications between the parties relative to the performance of this Agreement; and
- (f) Promptly notify the Company of the Facility's inability to supply any portion of its Committed Capacity. (Failure of the Seller to notify the Company of a known derating or inability to supply its full Committed Capacity from the Facility may, at the sole discretion of the Company, result in a determination of non-performance.)

7. The Seller's Obligation if the Seller Receives Early Capacity Payments

The Seller's payment option choice pursuant to paragraph 4.2.3 may result in payment by the Company for capacity delivered prior to June 1, 2024. The parties recognize that capacity payments received for any period through May 31, 2024, are in the nature of "early payment" for a future capacity benefit to the Company. To ensure that the Company will receive a capacity benefit for which early capacity payments have been made, or alternatively, that the Seller will repay the amount of early payments received to the extent the capacity benefit has not been conferred, the following provisions will apply:

The Company shall establish a Capacity Account. Amounts shall be added to the Capacity Account for each month through May 2024, in the amount of the Company's capacity payments made to the Seller pursuant to the Seller's chosen payment option from Schedule REF-1 or Exhibit D if applicable. The monthly balance in the Capacity Account shall accrue interest at the rate then prevailing for thirty (30) days highest grade commercial paper; such rate is to be determined by the Company thirty days prior to the date of each payment or posting of interest to the account. Commencing on June 1, 2024, there shall be deducted from the Capacity Account an Early Payment Offset Amount to reduce the balance in the Capacity Account. Such Early Payment Offset Amount shall be equal to that amount which the Company would have paid for

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capacity in that month if the capacity payment had been calculated pursuant to Option 1 in Schedule REF-1 and the Seller had elected to begin receiving payment on June 1, 2024 minus the monthly capacity payment the Company makes to the Seller pursuant to the capacity payment option chosen by the Seller in paragraph 4.2.3.

The Seller shall owe the Company and be liable for the outstanding balance in the Capacity Account. The Company agrees to notify the Seller monthly as to the current Capacity Account balance. Prior to receipt of early capacity payments, the Seller shall execute a promise to repay any outstanding balance in the Capacity Account in the event of a default pursuant to this Agreement. Such promise shall be secured by means mutually acceptable to the Parties and in accordance with the provisions of Schedule REF-1.

The specific repayment assurance selected for purposes of this Agreement is:

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Any outstanding balance in the Capacity Account shall immediately become due and payable, in full, in the event of default or at the conclusion of the term of this Agreement. The Seller's obligation to pay the balance in the Capacity Account shall survive termination of this Agreement.

8. Non-Performance Provisions

The Seller shall be entitled to receive a complete refund of the security deposit described in Section 2 of this contract (or in the event an alternative completion security vehicle is in effect, release of that completion security) upon the Facility's achieving commercial in-service status (which, for purposes of this Agreement, shall include the demonstration of capability to perform by actual delivery of firm capacity and energy to the Company) provided that this occurs prior to June 1, 2024 and that said

ISSUED BY: S. W. Connally, Jr.





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commercial in-service status is maintained from the date of initial demonstration to, through and including June 1, 2024. The Seller shall not be entitled to any of its security deposit if the Facility fails to achieve commercial in-service status prior to June 1, 2024 and maintain that status to, through and including said date. Additionally, once construction of the Facility or any additions necessary for the Facility to have the capability to deliver the anticipated Committed Capacity and energy to the Company from the Facility has commenced, the Seller will allow Company representatives to review quarterly the construction progress to provide the Company with a level of assurance that the Facility will be capable of delivering the anticipated Committed Capacity from the Facility on or before June 1, 2024.

Additionally, failure of the Seller to notify the Company of a known derating or inability to supply its full Committed Capacity from the Facility may, at the sole discretion of the Company, result in a determination of non-performance. Upon such determination by the Company, capacity payments to the Seller shall be suspended for a period of time equal to the time of the known derating or inability to supply the full Committed Capacity from the Facility or six months, whichever shall be longer.

#### 9. Default

9.1 Mandatory Default. The Seller shall be in default under this Agreement if: (1) Seller either voluntarily declares bankruptcy or becomes subject to involuntary bankruptcy proceedings; or (2) The Facility has elected to provide Committed Capacity in excess of zero (0) and the Facility ceases all electric generation for either of the Company's peak generation planning periods (summer or winter) occurring in a consecutive 12 month period. For purposes of this Agreement, the Company's summer peak generation planning period shall be May through September and the Company's winter peak generation planning period shall be December through February. The months included in the Company's peak generation planning periods may be changed, at the sole discretion of the Company, upon 12 months prior notice to the Seller.

ISSUED BY: S. W. Connally, Jr.





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9.2 Optional Default. The Company may declare the Seller to be in default if: (1) at any time prior to June 1, 2024 and after capacity payments have begun, the Company has sufficient reason to believe that the Facility is unable to deliver its Committed Capacity; (2) because of a Seller's refusal, inability or anticipatory breach of its obligation to deliver its Committed Capacity after June 1, 2024; or (3) the Company has made three or more determinations of non-performance due to the failure of the Seller to notify the Company of a known derating or inability to supply Committed Capacity during any eighteen month period.

#### 10. General Provisions

10.1 Permits. The Seller hereby agrees to obtain any and all governmental permits, certifications, or other authority the Seller and/or Facility are required to obtain as a prerequisite to engaging in the activities provided for in this Agreement. The Company hereby agrees to obtain any and all governmental permits certifications or other authority the Company is required to obtain as a prerequisite to engaging in the activities provided for in this Agreement.

10.2 Indemnification. The Seller agrees to indemnify and save harmless the Company, its subsidiaries or affiliates, and their respective employees, officers, and directors, against any and all liability, loss, damage, cost or expense which the Company, its subsidiaries, affiliates, and their respective employees, officers, and directors may hereafter incur, suffer or be required to pay by reason of negligence on the part of the Seller in performing its obligations pursuant to this Agreement or the Seller's failure to abide by the provisions of this Agreement. The Company agrees to indemnify and save harmless the Seller against any and all liability, loss, damage, cost or expense which the Seller may hereafter incur, suffer or be required to pay by reason of negligence on the part of the Company in performing its obligations pursuant to this Agreement or the Company's failure to abide by the provision of this Agreement. The Seller agrees to include the Company as an additional named insured in any liability insurance policy or policies the Seller obtains to protect the Seller's interests with respect to the Seller's indemnity and hold harmless assurances to parties contained in this Section.

ISSUED BY: S. W. Connally, Jr



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The Seller shall deliver to the Company at least fifteen days prior to the delivery of any capacity and energy under this Agreement, a certificate of insurance certifying the Seller's and Facility's coverage under a liability insurance policy issued by a reputable insurance company authorized to do business in the State of Florida, protecting and indemnifying the Seller and the Company as an additional named insured, their officers, employees, and representatives, against all liability and expense on account of claims and suits for injuries or damages to persons or property arising out of the Seller's and the Facility's performance under or failure to abide by the terms of this Agreement, including without limitation any claims, damages or injuries caused by operation of any of the Facility's equipment or by the Seller's failure to maintain the Facility's equipment in satisfactory and safe operating conditions, or otherwise arising out of the performance by the Seller of the duties and obligations arising under the terms and conditions of this Agreement.

The policy providing such coverage shall provide comprehensive general liability insurance, including property damage, with limits in an amount not less than \$1,000,000 for each occurrence. In addition, the above required policy shall be endorsed with a provision whereby the insurance company will notify the Company within thirty days prior to the effective date of cancellation or a material change in the policy. The Seller shall pay all premiums and other charges required or due in order to maintain such coverage as required under this section in force during the entire period of this Agreement beginning with the initial delivery of capacity and energy to the Company.

10.3 Taxes or Assessments. It is the intent of the parties under this provision that the Seller hold the Company and its general body of ratepayers harmless from the effects of any additional taxes, assessments or other impositions that arise as a result of the purchase of energy or capacity from the Facility in lieu of other energy or capacity and that any savings in regards to taxes or assessments be included in the avoided cost payments made to the Seller to the extent

ISSUED BY: S. W. Connally, Jr.



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permitted by law. In the event the Company becomes liable for additional taxes, assessments or imposition arising out of its transaction with the Seller under either this agreement or any related interconnection agreement or due to changes in laws affecting the Company's purchases of energy or capacity from the Facility occurring after the execution of this agreement and for which the Company would not have been liable if it had produced the energy and/or constructed facilities sufficient to provide the capacity contemplated under this agreement itself, the Company may bill the Seller monthly for such additional expenses or may offset them against amounts due the Seller from the Company. Any savings in taxes, assessments or impositions that accrue to the Company as a result of its purchase of energy and capacity under this agreement that are not already reflected in the avoided energy or avoided capacity payments made to the Seller hereunder, shall be passed on to the Seller to the extent permitted by law without consequential penalty or loss of such benefit to the Company.

10.4 Force Majeure. If either party shall be unable, by reason of force majeure, to carry out its obligations under this Agreement, either wholly or in part, the party so failing shall give written notice and full particulars of such cause or causes to the other party as soon as possible after the occurrence of any such cause; and such obligations shall be suspended during the continuance of such hindrance which, however, shall be extended for such period as may be necessary for the purpose of making good any suspension so caused. The term "force majeure" shall be taken to mean acts of God, strikes, lockouts or other industrial disturbances, wars, blockades, insurrections, riots, arrests and restraints of rules and people, environmental constraints lawfully imposed by federal, state or local government bodies, explosions, fires, floods, lightning, wind, perils of the sea provided, however, that no occurrences may be claimed to be a force majeure occurrence if it is caused by the negligence or lack of due diligence on the part of the party attempting to make such claim. The Seller agrees to pay the costs necessary to reactivate the Facility and/or the interconnection with the Company's system if the same are rendered inoperable

ISSUED BY: S. W. Connally, Jr.





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due to actions of the Seller, its agents, or force majeure events affecting the Facility or the interconnection with the Company. The Company agrees to reactivate at its own cost the interconnection with the Facility in circumstances where any interruptions to such interconnections are caused by the Company or its agents.

10.5 Assignment. The Seller shall have the right to assign its benefits under this Agreement, but the Seller shall not have the right to assign its obligations and duties without the Company's prior written approval.

10.6 Disclaimer. In executing this Agreement, the Company does not, nor should it be construed, to extend its credit or financial support for the benefit of any third parties lending money to or having other transactions with the Seller or any assignee of this Agreement.

10.7 Notification. For purposes of making any and all non-emergency oral and written notices, payments or the like required under the provisions of this Agreement, the parties designate the following 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 Seller:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

For Gulf Power Company:

Corporate Secretary  
Gulf Power Company  
One Energy Place  
Pensacola FL 32520-0780

10.8 Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida.

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

ISSUED BY: S. W. Connally, Jr.





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10.10 Complete Agreement and Amendments. All previous communications or agreements between the parties, whether verbal or written, with reference to the subject matter of this Agreement are hereby abrogated. No amendment or modification to this Agreement shall be binding unless it shall be set forth in writing and duly executed by both parties to this Agreement and, if required, approved by the FPSC.

10.11 Incorporation of Schedule. The parties agree that this Agreement shall be subject to all of the provisions contained in the Company's published Schedule REF-1 as approved and on file with the FPSC, as the Schedule exists at the time this Agreement is properly submitted by the Facility to the Company as tendered acceptance of the Company's standard offer.

10.12 Survival of Agreement. This Agreement, as may be amended from time to time, shall be binding and insure to the benefit of the Parties' respective successors-in-interest and legal representatives.

11. Environmental Interests

In the event that the Seller decides to sell any or all Renewable Energy Certificates, Green Tags, or other tradable environmental interests (collectively "Environmental Interests") that result from the electric generation of the Facility during the term of this Agreement, the Seller shall provide notice to the Company of its intent to sell such Environmental Interests and provide the Company a reasonable opportunity to offer to purchase such Environmental Interests.

12. Changes in Environmental and Governmental Regulations

This contract may be reopened at the election of either party in the event that environmental or other regulatory requirements are enacted during the term of this contract which either (a) increase or (b) decrease the full avoided costs of the Avoided Unit. The parties may negotiate a threshold amount of change below which this reopener will not apply.

ISSUED BY: S. W. Connally, Jr.



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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officers.

**GULF POWER COMPANY**

By: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print or Type Name)

Title: \_\_\_\_\_

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

**SELLER**

By: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print or Type Name)

Title: \_\_\_\_\_

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

ISSUED BY: S. W. Connally, Jr.

# Exhibit B



Section No. IX  
~~Eighth~~<sup>Ninth</sup> Revised Sheet No. 9.82  
Canceling ~~Seventh~~<sup>Eighth</sup> Revised Sheet No. 9.82

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(Continued from Schedule REF-1, Sheet No. 9.81)

#### LIMITATIONS:

Purchases under this schedule are subject to the Company's "General Standards for Safety and Interconnection of Cogeneration and Small Power Production Facilities to the Electric Utility System" and to FPSC Rules 25-17.080 through 25-17.091, F.A.C., and are limited to those Facilities that:

- A. Beginning upon the date, as prescribed by the FPSC, that a Renewable Standard Offer is deemed available, execute the Company's Renewable Standard Offer Contract for the purchase of firm capacity and energy; and
- B. Commit to commence deliveries of firm capacity and energy no later than the date specified by the Facility's owner or representative, or the anticipated in-service date of the Company's generating facility or purchased power resource ("Avoided Unit or Resource") that is designated herein. Such deliveries will continue for a minimum of ten (10) years from the anticipated in-service date of the Company's Avoided Unit or Resource up to a maximum of the life of the Company's Avoided Unit or Resource.

#### DETERMINATION OF FACILITY'S COMMITTED CAPACITY VALUE

Prior to execution of a Renewable Standard Offer Contract, or negotiated contract, between the Company and a Facility, the Company will determine the Facility's capacity value in relation to the Company's Avoided Unit or Resource during the term of the contract as provided in FPSC Rules 25-17.240 (2), 25-17.250 (1), and 25-17.0832 (3) and (4) F.A.C. The "Committed Capacity" as specified in the Facility's Renewable Standard Offer Contract will be used as the basis for capacity payments to be received by the Facility from the Company during the term of the Renewable Standard Offer Contract. If the Facility elects to make no commitment as to the quantity or timing of its deliveries to the Company, the Committed Capacity in its Renewable Standard Offer will be zero (0) Megawatts, and the capacity rates set in accordance with the provisions of Paragraph A below shall not apply.

#### RATES FOR PURCHASES BY THE COMPANY

Firm capacity is purchased in accordance with the provisions of paragraph A below at a unit cost, in dollars per kilowatt per month, based on the value of the Avoided Unit or Resource that Gulf has designated below for purposes of the Renewable Standard Offer. The Avoided Unit is currently designated as 654 MWs of Combustion Turbine generation-a 595 MW 1-on-1 dual-fuel Combined Cycle with a June 1, 2023~~2024~~ anticipated in-service date. Energy is purchased at a unit cost, in cents per kilowatt-hour, at the Company's energy rates in accordance with the provisions of ~~Paragraph~~ B below.



**ISSUED BY:** S. W. Connally, Jr.



Section No. IX  
~~Tenth~~<sup>Eleventh</sup> Revised Sheet No. 9.85  
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capacity payments made to the Facility over the term of the contract shall not exceed the cumulative present value of the capacity payments which would have been made to the Facility had such payments been made pursuant to Option 1.

All capacity payments made by the Company prior to the anticipated in-service date of the Company's Avoided Unit or Resource are considered "Early Payments". The owner, owner's representative, or operator of the Facility, as designated by the Company, shall secure its obligation to repay, with interest, the accumulated amount of Early Payments to the extent that the cumulative present value of the capacity payments made to the Facility over the term of the contract exceeds the cumulative present value of the capacity payments which would have been made to the Facility had such payments been made pursuant to Option 1, or to the extent that annual firm capacity payments made to the Facility in any year exceed that year's annual value of deferring the Company's Avoided Unit or Resource in the event the Facility defaults under the terms of its Renewable Standard Offer Contract with the Company. The Company will provide to the Facility monthly summaries of the total outstanding balance of such security obligations. A summary of the types of security instruments which are generally acceptable to the Company is set forth in Paragraph C of the SPECIAL PROVISIONS Section below.

**MONTHLY CAPACITY PAYMENT RATE (MCR)  
BASED ON GULF'S CURRENTLY SPECIFIED  
AVOIDED UNIT OR RESOURCE**

June - May Contract Period	Option 1 Normal \$/KW-MO	Option 2 Early \$/KW-MO	Option 3 Levelized \$/KW-MO	Option 4 Early Levelized \$/KW-MO
<del>2017 to 2018</del>	<del>0.00</del>	<del>2.16</del>	<del>0.00</del>	<del>2.44</del>
2018 to 2019	0.00	2,225.45	0.00	2,465.92
2019 to 2020	0.00	2,285.56	0.00	2,485.96
2020 to 2021	0.00	2,345.68	0.00	2,506.01
2021 to 2022	0.00	2,415.80	0.00	2,526.05
2022 to 2023	0.00	2,485.92	0.00	2,546.10
2023 to 2024	4,550.00	2,546.05	4,900.00	2,576.15
2024 to 2025	4,671.87	2,616.18	4,9412.50	2,596.20
2025 to 2026	4,8012.06	2,696.31	4,9812.54	2,626.24
2026 to 2027	4,9312.25	2,766.44	5,0312.57	2,646.30
2027 to 2028	5,0712.45	2,846.57	5,0812.61	2,676.35
2028 to 2029	5,2412.65	2,916.71	5,1312.65	2,696.40
2029 to 2030	5,3512.85	2,996.85	5,1712.69	2,726.45
2030 to 2031	5,5013.06	3,087.00	5,2312.73	2,756.51
2031 to 2032	5,6513.27	3,167.15	5,2812.77	2,786.56
2032 to 2033	5,8013.49	3,257.30	5,3312.81	2,816.62
2033 to 2034	13.71	7.45	12.85	6.68

ISSUED BY: S. W. Connally, Jr.



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~~First~~Second Revised Sheet No. 9.86  
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The capacity payment for a given month will be added to the energy payment for such month and tendered by the Company to the Facility as a single payment as promptly as possible, normally by the twentieth business day following the day the meter is read.

B. Energy Rates

If the Facility's Committed Capacity is zero (0), the Company agrees to pay the Facility for energy delivered to the Company in accordance with the rate calculation described in the Company's Rate Schedule COG-1 as it may be amended from time to time. If the Facility's Committed Capacity is greater than zero (0), the Company agrees to pay the Facility for energy delivered to the Company in accordance with the provisions of Section B (1)-(3) below:

1. Payments Starting On In-Service Date of Avoided Unit or Resource: The Facility shall be paid at the Avoided Unit or Resource's energy rate for all energy delivered to the Company during each hour of the monthly billing period in which the Avoided Unit or Resource would have operated had the unit been installed. For each hour of the monthly billing period in which the Avoided Unit or Resource would not have operated, the Facility shall be paid for all energy delivered to the Company during that hour at the lesser of the Company's As-Available energy rate as described in its Rate Schedule COG-1, Sheet 9.3 or the Avoided Unit or Resource's energy rate.

The Avoided Unit or Resource's energy rate, in cents per kilowatt-hour, shall be the product of the Avoided Unit or Resource's applicable fuel cost and heat rate, plus the applicable variable operation and maintenance expense. All energy purchases shall be adjusted for losses from the point of metering to the point of interconnection.

2. Payments Prior To In-Service Date of Avoided Unit or Resource: The Company's As-Available energy rate, as described in Rate Schedule COG-1, Sheet 9.3, will be applied to all energy delivered by the Facility to the Company prior to the Avoided Unit or Resource's in-service date. As-available energy payments to the Facility shall be based on the sum, over all hours of the monthly billing period in which the Facility delivers energy to the Company, of the product of each hour's As-Available energy rate times the energy received by the Company during that hour. All energy purchases shall be adjusted for losses from the point of metering to the point of interconnection.
3. Fixed Energy Payments: Upon request by the Facility, the Company will provide the following fixed payment options for energy delivered to the Company.
  - a. As-Available energy payments made prior to the Avoided Unit or Resource's in-service date shall be based on the Company's year-by-year projection of system incremental fuel costs, prior to hourly economy energy sales to other utilities, based on normal weather and fuel market conditions. A fuel market volatility risk premium may be added to the energy payments upon mutual agreement between Company and Facility regarding the method or mechanism for determining such risk premium.

ISSUED BY: S. W. Connally, Jr.





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~~Fourth~~<sup>Fifth</sup> Revised Sheet No. 9.88  
Canceling ~~Third~~<sup>Fourth</sup> Revised Sheet No. 9.88

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For the first performance period of the Renewable Standard Offer Contract, the repayment obligation shall be determined as below, except that the period for which the availability requirement applies and which is subject to repayment shall begin on the Avoided Unit or Resource's in-service date and end on the August 31 immediately following the Avoided Unit or Resource's in-service date.

In addition to the foregoing, when early capacity payments have been elected and received, the failure of the Facility to satisfy the availability requirement set forth below shall also result in an obligation for additional repayments by the Facility to the Company. The amount of such additional repayment shall be equal to the difference between: (1) what the Facility would have been paid during the previous twelve months ending August 31 had it elected the normal payment option; and (2) what it was paid pursuant to the payment option selected. Prior to the in-service date of the Avoided Unit or Resource, all performance requirements as listed in Paragraph B of the following Section will apply at the time initial capacity and energy deliveries from the Facility commence.

#### ANNUAL CAPACITY AVAILABILITY FACTOR DETERMINATION

In October following each performance period, the Company will calculate the availability of the Facility over the most recent twelve month performance period ending August 31. For purposes of this Schedule, the annual capacity availability is determined using the NERC Generation Availability Data System (GADS) formula for EAF that is shown below. The Facility will be entitled to retain capacity payments received during the annual period if an EAF of ~~95%~~<sup>98%</sup> is maintained for each performance period. If the Facility fails to maintain this EAF, then the Facility will repay the Company a portion of the performance period capacity payments as calculated in accordance with the procedure in Paragraph A.

$$EAF = \{ [ AH - (EUDH + EPDH + ESEDH) ] / PH \} \times 100 (\%) \text{ where,}$$

AH = Available Hours  
Sum of all SH, RSH, Pumping Hours, and Synchronous Condensing Hours.

EPDH = Equivalent Planned Derated Hours  
Product of the Planned Derated Hours and the Size of Reduction, divided by the NMC.

ESEDH = Equivalent Seasonal Derated Hours  
NMC less the NDC, times the Available Hours (AH), divided by the NMC.

EUDH = Equivalent Unplanned Derated Hours  
Product of the Unplanned Derated Hours and the Size of Reduction, divided by the NMC.

ISSUED BY: S. W. Connally, Jr.



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~~Fourth~~<sup>Fifth</sup> Revised Sheet No. 9.89  
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- NDC = Net Dependable Capacity  
NMC modified for ambient limitations.
- NMC = Capacity a unit can sustain over a specified period when not restricted by ambient conditions or equipment deratings, minus the losses associated with station service or auxiliary loads.
- PH = Period Hours  
Number of hours a unit was in the active state. A unit generally enters the active state on its commercial date.
- RSH = Reserve Shutdown Hours  
Total number of hours the unit was available for service but not electrically connected to the transmission system for economic reasons.
- SH = Service Hours  
Total number of hours a unit was electrically connected to the transmission system.

A. Capacity Repayment Calculation

The following conditions will determine the amount of the Facility's Capacity Repayment obligation:

1. If EAF is greater than or equal to ~~95%~~<sup>88%</sup>, then;  
$$\text{Capacity Repayment (CR)} = 0$$
2. If EAF is less than ~~95%~~<sup>88%</sup> but equal to or greater than 60%, then;  
$$\text{CR} = [\text{Monthly Capacity Rate (MCR)} \times \text{Committed Capacity (CC)} \times \text{Months in Performance Period (MPP)} \times ((\del{9588} - \text{EAF})/\del{9588})]$$
3. If EAF is less than 60%, then;  
$$\text{CR} = \text{MCR} \times \text{CC} \times \text{MPP}$$

B. Additional Performance Criteria

1. The Facility shall provide monthly generation estimates by October 1 for the next calendar year; and
2. The Facility shall promptly update its yearly generation schedule when any changes are determined necessary; and

ISSUED BY: S. W. Connally, Jr.



Section No. IX  
~~Fourth~~<sup>Fifth</sup> Revised Sheet No. 9.97  
Canceling ~~Third~~<sup>Fourth</sup> Revised Sheet No. 9.97

**STANDARD OFFER CONTRACT FOR PURCHASE OF FIRM  
CAPACITY AND ENERGY FROM A RENEWABLE ENERGY  
FACILITY OR SMALL QUALIFYING FACILITY  
("RENEWABLE STANDARD OFFER CONTRACT")**

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THIS AGREEMENT is made and entered into this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_ by and between \_\_\_\_\_, hereinafter referred to as the "Seller"; and Gulf Power Company, a corporation, hereinafter referred to as the "Company". The Seller and the Company shall collectively be referred to herein as the "Parties".

**WITNESSETH:**

WHEREAS, for purposes of this contract, the term "Renewable Energy Facility" means a facility that produces electrical energy from one or more of the sources stated in Florida Public Service Commission (FPSC) Rule 25-17.210 (1), Florida Administrative Code (F.A.C.), and the term "Small Qualifying Facility" means a facility with a design capacity of 100 KW or less as defined in FPSC Rule 25-17.080, F.A.C., thus, both "Renewable Energy Facility" and "Small Qualifying Facility" are herein referred to as "Facility"; and

WHEREAS, the Seller desires to sell, and the Company desires to purchase, firm capacity and energy, or energy only, to be generated by the Facility, such sale and purchase to be consistent with FPSC Rules 25-17.080 through 25-17.091; and

WHEREAS, the Seller, in accordance with FPSC Rule 25-17.087, F.A.C., has entered into an interconnection agreement with the utility that the Facility is directly interconnected, attached hereto as Appendix A; and

WHEREAS, the FPSC has approved the following standard contract for use in the acceptance of the Company's standard offer for the purchase of firm capacity and energy, or energy only, from Facilities.

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

ISSUED BY: S. W. Connally, Jr.





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~~Fifth~~<sup>Sixth</sup> Revised Sheet No. 9.99  
Canceling ~~Fourth~~<sup>Fifth</sup> Revised Sheet No. 9.99

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The entire Facility, whether comprised in whole or in part of the generator units set forth above, is designed to produce a maximum of \_\_\_\_\_ kilowatts (KW) of electric power at an 85% power factor.

2. Term of the Agreement

This Agreement shall begin immediately upon its execution and the contemporaneous payment by the Seller to the Company of a completion security deposit in the amount of \$20.00 times each KW of nameplate capacity of the Facility's generator unit(s). This Agreement shall end at 12:01 A.M., \_\_\_\_\_, 20\_\_\_\_ (date specified shall be no earlier than May 31, ~~2033~~<sup>2034</sup>).

Notwithstanding the foregoing, if construction and commercial operation of the Facility are not accomplished before June 1, ~~2023~~<sup>2024</sup>, the Company's obligations to the Seller under this Agreement shall be considered to be of no force and effect. The Company shall be entitled to retain and use the funds required by the Company as a completion security deposit under this section of the Agreement.

At the election of the Seller, the completion security deposit may be phased in such that one half of the total deposit due is paid upon contract execution and the remainder is to be paid within 12 months after contract execution. If the Seller elects to phase in payment of the completion security deposit due under this paragraph, the effective date of the contract shall be the date of execution provided, however, that the Company shall have no further obligation to the Seller if either installment of the completion security deposit is not timely received by the Company.

ISSUED BY: S. W. Connally, Jr.





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~~Fourth~~<sup>Fifth</sup> Revised Sheet No. 9.100  
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Depending on the nature of the Facility's operation, financial health and solvency, and its ability to meet the terms and conditions of this Agreement, one of the following, at the Company's discretion in accordance with the provisions of Schedule REF-1, may be used as an alternative to a cash deposit as a means of securing the completion of the project in accord with this Agreement:

- (a) an unconditional, irrevocable direct pay letter; or
- (b) surety bond; or
- (c) other means acceptable to the Company.

In the case of a governmental solid waste facility, pursuant to FPSC Rule 25-17.091, F.A.C., the following will be acceptable to the Company: the unsecured promise of a municipal, county, or state government to pay the actual damages incurred by the Company because the governmental facility fails to come on line prior to June 1, ~~2023~~<sup>2024</sup>.

The specific completion security vehicle agreed upon by the parties is: \_\_\_\_\_

(IN ORDER FOR THIS FORM OF CONTRACT TO BE USED TO TENDER ACCEPTANCE OF THE COMPANY'S STANDARD OFFER BY A SELLER OTHER THAN A GOVERNMENTAL SOLID WASTE FACILITY, THE ABOVE LINE MUST SPECIFY CASH DEPOSIT IN THE APPROPRIATE AMOUNT UNLESS THE SELLER HAS SECURED THE PRIOR WRITTEN CONSENT FROM THE COMPANY TO AN ALTERNATIVE COMPLETION SECURITY VEHICLE.)

3. Sale of Electricity by the Facility

The Company agrees to purchase firm capacity and energy generated at the Facility and transmitted to the Company by the Facility. The purchase and sale of firm capacity and energy pursuant to this Agreement shall be in accordance with the following billing methodology (choose one):

- ( ) Net Billing Arrangement; or
- ( ) Simultaneous Purchase and Sales Arrangement.

ISSUED BY: S. W. Connally, Jr.



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The billing methodology chosen above may not be changed except in accordance with and subject to the following provisions of Rules 25-17.082 and 25-17.0832 F.A.C.:

- (a) when a Facility selling as-available energy enters into a negotiated contract or standard offer contract for the sale of firm capacity and energy; or
- (b) when a firm capacity and energy contract expires or is lawfully terminated by either the Facility or the purchasing utility; or
- (c) when the Facility is selling as-available energy and has not changed billing methods within the last twelve months; and
- (d) upon at least thirty days advance written notice to the Company;
- (e) upon the installation of any additional metering equipment reasonably required to effect the change in billing and upon payment by the Facility for such metering equipment and its installation;
- (f) upon completion and approval of any alterations to the interconnection reasonably required to effect the change in billing and upon payment by the Facility for such alterations; and
- (g) where the election to change billing methods will not contravene the provisions of Rule 25-17.0832 or the tariff under which the Facility receives electrical service, or any previously agreed upon contractual provision between the Facility and the Company.

4. Payment for Electricity Produced by the Facility

4.1 Energy

The Company agrees to pay the Seller for energy the Facility produces and delivers for sale to the Company. If the Facility's Committed Capacity in Paragraph 4.2.1 and Paragraph 4.2.2 is zero (0), the Company agrees to pay the Facility for energy delivered to the Company in accordance with the rate calculation described in the Company's Rate Schedule COG-1, as it may be amended from time to time. If the Facility's Committed Capacity is greater than zero (0), ~~The~~ purchase and sale of energy pursuant to this Agreement shall be in accordance with the rates and procedures contained in Paragraph B of the **RATES FOR PURCHASES BY THE COMPANY** section of Schedule REF-1 as it exists at the time this Agreement is properly submitted by the Seller to the Company as tendered acceptance of the Company's Standard Offer.

ISSUED BY: S. W. Connally, Jr.



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~~Fourth~~Fifth Revised Sheet No. 9.102  
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For all energy delivered by the Facility to the Company and to the extent applicable, the Seller elects to be paid pursuant to the method described in:

- ☐ Paragraph B (1), or
- ☐ Paragraph B (3)(b),  
and (if applicable);
- ☐ Paragraph B (2), or
- ☐ Paragraph B (3)(a)

of the **RATES FOR PURCHASES BY THE COMPANY** section of Schedule REF-1. If the Seller elects any payment method under Paragraph B (3), the details underlying the derivation of the associated energy payments will be described in an exhibit to this Standard Offer Contract. The Company will provide the Seller an energy payment schedule for the elected payment method within thirty (30) days after receipt of a Seller's request for such information.

#### 4.2 Capacity

4.2.0 No Committed Capacity. If the Facility elects to make no commitment as to the quantity or timing of its deliveries to the Company, the Committed Capacity in this Renewable Standard Offer Contract will be zero (0) Megawatts, and the capacity rates set in accordance with the provisions of Paragraph 4.2.1 through Paragraph 4.2.3, Paragraph 7, and Paragraph 8 shall not apply.

4.2.1 Anticipated Committed Capacity. The Facility is expected to deliver approximately \_\_\_\_\_ kilowatts of capacity, beginning on or about \_\_\_\_\_, 20\_\_\_\_.  
(Date specified may not be later than June 1, ~~2023~~2024.)

The Facility may finalize its Committed Capacity (CC) after initial facility testing, and specify when capacity payments are to begin, by completing Paragraph 4.2.2 at a date subsequent to the execution of this Agreement by the parties. However, the Seller must complete Paragraph 4.2.2 before June 1, ~~2023~~2024 in order to be entitled to any capacity payments pursuant to this Agreement. The final Committed Capacity set forth in Paragraph 4.2.2 shall not exceed plus or minus ten percent of the above estimate. The date specified in Paragraph 4.2.2 as the date on which capacity payments shall begin shall be no earlier than the date specified above, nor any later than June 1, ~~2023~~2024.



**ISSUED BY:** S. W. Connally, Jr.



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4.2.2 Actual Committed Capacity. The capacity committed by the Facility (Committed Capacity or CC) for the purposes of this Agreement is \_\_\_\_\_ kilowatts beginning \_\_\_\_\_, \_\_\_\_\_. The Seller is committing this amount of capacity based on its agreement and commitment that this capacity will maintain an Equivalent Availability Factor (EAF) of ~~95%~~<sup>88%</sup>. The EAF will be based on the economic operation of a ~~combustion turbine~~<sup>Combined Cycle</sup> generating facility (Avoided Unit) that Gulf has designated as the Avoided Unit for purposes of the Standard Offer. The Seller elects to receive, and the Company agrees to commence calculating, capacity payments in accordance with this Agreement starting with the first billing month following the date specified in this paragraph as the date on which capacity sales under this Agreement will begin.

4.2.3 Capacity Payments. The Seller chooses to receive capacity payments from the Company under Option \_\_\_\_\_ or \_\_\_\_\_ a customized payment stream as described in the Company's Schedule REF-1 of the Company Tariff for Retail Electric Service as it exists at the time this Agreement is properly submitted by the Seller to the Company as tendered acceptance of the Company Standard Offer. If the customized payment option is chosen by the Seller as the preferred capacity payment option, the details underlying the derivation of such payment stream will be described in an exhibit to this Standard Offer Contract.

The Capacity Payments to be made by the Company to the Seller are based upon the Avoided Unit that the Company has designated for purposes of the Standard Offer. The Capacity Payments to the Seller are based on an avoided ~~gas-fired Combustion Turbine~~<sup>dual-fuel 1-on-1 Combined Cycle</sup> generating facility with the following economic assumptions:

Size: <del>654</del> <sup>595</sup> MW total	Installed Costs ( <del>2023</del> <sup>2024</sup> ): <del>\$564</del> <sup>\$564</sup> 1,223/kW
Discount Rate: <del>6.34</del> <sup>7.26</sup> %	AFUDC Rate: <del>7.25</del> <sup>7.90</sup> %
Annual Inflation: <del>2.72</del> <sup>2.09</sup> %	K-factor: <del>1.378</del> <sup>1.25</sup> 10
Annual Capacity Factor: <del>42.97</del> <sup>42.0</sup> %	Fixed O & M: <del>\$48.57</del> <sup>\$48.57</sup> 55.93/kW-yr
Equivalent Availability: <del>95</del> <sup>88</sup> %	Unit Life: 40 years

ISSUED BY: S. W. Connally, Jr.



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The Company agrees it will pay the Seller a capacity payment. This capacity payment will be the product of the Facility's Committed Capacity and the applicable rate from the Seller's chosen capacity payment option in accordance with the Company's Schedule REF-1, as it exists at the time this Agreement is properly submitted by the Seller to the Company as tendered acceptance of the Company's Standard Offer. In the event either: (1) the date specified in Section 2 of this Agreement is later than June 1, ~~2033~~2034; or (2) the date specified in Paragraph 4.2.2 as the date capacity payments are to begin is one other than the dates shown in Schedule REF-1, a payment schedule will be calculated by the Company and attached to this agreement as Exhibit D. Under those circumstances, the payment schedule set forth in Exhibit D will be used in the calculation of capacity payments pursuant to this paragraph. The Company will provide the Seller a capacity payment schedule for the chosen payment method within thirty (30) days after receipt of a Seller's request for such information. The capacity payment for a given month will be added to the energy payment for such month and tendered by the Company to the Seller as a single payment as promptly as possible, normally by the twentieth business day following the day the meter is read.

In October following each performance period, the Company will calculate the availability of the Facility over the most recent twelve month period ending August 31. For purposes of this Agreement, availability means Equivalent Availability Factor (EAF) as defined by the North American Electric Reliability Council Generating Availability Data System (NERC GADS) or its successor's indice. If the availability (EAF) of the Facility is not equal to or greater than ~~0.9588~~ (9588%), then the Seller will repay the Company a portion of the performance period capacity payments as calculated in accordance with the procedure detailed in the **ANNUAL CAPACITY AVAILABILITY FACTOR DETERMINATION** section of Rate Schedule REF-1.

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- (e) Comply with reasonable requirements of the Company regarding day-to-day or hour-by-hour communications between the parties relative to the performance of this Agreement; and
- (f) Promptly notify the Company of the Facility's inability to supply any portion of its Committed Capacity. (Failure of the Seller to notify the Company of a known derating or inability to supply its full Committed Capacity from the Facility may, at the sole discretion of the Company, result in a determination of non-performance.)

**7. The Seller's Obligation if the Seller Receives Early Capacity Payments**

The Seller's payment option choice pursuant to paragraph 4.2.3 may result in payment by the Company for capacity delivered prior to June 1, ~~2023~~<sup>2024</sup>. The parties recognize that capacity payments received for any period through May 31, ~~2023~~<sup>2024</sup>, are in the nature of "early payment" for a future capacity benefit to the Company. To ensure that the Company will receive a capacity benefit for which early capacity payments have been made, or alternatively, that the Seller will repay the amount of early payments received to the extent the capacity benefit has not been conferred, the following provisions will apply:

The Company shall establish a Capacity Account. Amounts shall be added to the Capacity Account for each month through May ~~2023~~<sup>2024</sup>, in the amount of the Company's capacity payments made to the Seller pursuant to the Seller's chosen payment option from Schedule REF-1 or Exhibit D if applicable. The monthly balance in the Capacity Account shall accrue interest at the rate then prevailing for thirty (30) days highest grade commercial paper; such rate is to be determined by the Company thirty days prior to the date of each payment or posting of interest to the account. Commencing on June 1, ~~2023~~<sup>2024</sup>, there shall be deducted from the Capacity Account an Early Payment Offset Amount to reduce the balance in the Capacity Account. Such Early Payment Offset Amount shall be equal to that amount which the Company would have paid for

ISSUED BY: S. W. Connally, Jr.





Section No. IX  
~~Fourth~~<sup>Fifth</sup> Revised Sheet No. 9.107  
Canceling ~~Third~~<sup>Fourth</sup> Revised Sheet No. 9.107

PAGE	EFFECTIVE DATE
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(Continued from Standard Offer Contract, Sheet No. 9.106)

capacity in that month if the capacity payment had been calculated pursuant to Option 1 in Schedule REF-1 and the Seller had elected to begin receiving payment on June 1, ~~2023~~<sup>2024</sup> minus the monthly capacity payment the Company makes to the Seller pursuant to the capacity payment option chosen by the Seller in paragraph 4.2.3.

The Seller shall owe the Company and be liable for the outstanding balance in the Capacity Account. The Company agrees to notify the Seller monthly as to the current Capacity Account balance. Prior to receipt of early capacity payments, the Seller shall execute a promise to repay any outstanding balance in the Capacity Account in the event of a default pursuant to this Agreement. Such promise shall be secured by means mutually acceptable to the Parties and in accordance with the provisions of Schedule REF-1.

The specific repayment assurance selected for purposes of this Agreement is:

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Any outstanding balance in the Capacity Account shall immediately become due and payable, in full, in the event of default or at the conclusion of the term of this Agreement. The Seller's obligation to pay the balance in the Capacity Account shall survive termination of this Agreement.

8. Non-Performance Provisions

The Seller shall be entitled to receive a complete refund of the security deposit described in Section 2 of this contract (or in the event an alternative completion security vehicle is in effect, release of that completion security) upon the Facility's achieving commercial in-service status (which, for purposes of this Agreement, shall include the demonstration of capability to perform by actual delivery of firm capacity and energy to the Company) provided that this occurs prior to June 1, ~~2023~~<sup>2024</sup> and that said

ISSUED BY: S. W. Connally, Jr.



Section No. IX  
~~Fourth~~<sup>Fifth</sup> Revised Sheet No. 9.108  
Canceling ~~Third~~<sup>Fourth</sup> Revised Sheet No. 9.108

PAGE	EFFECTIVE DATE
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(Continued from Standard Offer Contract, Sheet No. 9.107)

commercial in-service status is maintained from the date of initial demonstration to, through and including June 1, ~~2023~~<sup>2024</sup>. The Seller shall not be entitled to any of its security deposit if the Facility fails to achieve commercial in-service status prior to June 1, ~~2023~~<sup>2024</sup> and maintain that status to, through and including said date. Additionally, once construction of the Facility or any additions necessary for the Facility to have the capability to deliver the anticipated Committed Capacity and energy to the Company from the Facility has commenced, the Seller will allow Company representatives to review quarterly the construction progress to provide the Company with a level of assurance that the Facility will be capable of delivering the anticipated Committed Capacity from the Facility on or before June 1, ~~2023~~<sup>2024</sup>.

Additionally, failure of the Seller to notify the Company of a known derating or inability to supply its full Committed Capacity from the Facility may, at the sole discretion of the Company, result in a determination of non-performance. Upon such determination by the Company, capacity payments to the Seller shall be suspended for a period of time equal to the time of the known derating or inability to supply the full Committed Capacity from the Facility or six months, whichever shall be longer.

9. Default

9.1 Mandatory Default. The Seller shall be in default under this Agreement if: (1) Seller either voluntarily declares bankruptcy or becomes subject to involuntary bankruptcy proceedings; or (2) ~~The Facility has elected to provide Committed Capacity in excess of zero (0) and~~ the Facility ceases all electric generation for either of the Company's peak generation planning periods (summer or winter) occurring in a consecutive 12 month period. For purposes of this Agreement, the Company's summer peak generation planning period shall be May through September and the Company's winter peak generation planning period shall be December through February. The months included in the Company's peak generation planning periods may be changed, at the sole discretion of the Company, upon 12 months prior notice to the Seller.

ISSUED BY: S. W. Connally, Jr.



Section No. IX  
~~Fourth~~<sup>Fifth</sup> Revised Sheet No. 9.109  
Canceling ~~Third~~<sup>Fourth</sup> Revised Sheet No. 9.109

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(Continued from Standard Offer Contract, Sheet No. 9.108)

9.2 Optional Default. The Company may declare the Seller to be in default if: (1) at any time prior to June 1, ~~2023~~<sup>2024</sup> and after capacity payments have begun, the Company has sufficient reason to believe that the Facility is unable to deliver its Committed Capacity; (2) because of a Seller's refusal, inability or anticipatory breach of its obligation to deliver its Committed Capacity after June 1, ~~2023~~<sup>2024</sup>; or (3) the Company has made three or more determinations of non-performance due to the failure of the Seller to notify the Company of a known derating or inability to supply Committed Capacity during any eighteen month period.

#### 10. General Provisions

10.1 Permits. The Seller hereby agrees to obtain any and all governmental permits, certifications, or other authority the Seller and/or Facility are required to obtain as a prerequisite to engaging in the activities provided for in this Agreement. The Company hereby agrees to obtain any and all governmental permits certifications or other authority the Company is required to obtain as a prerequisite to engaging in the activities provided for in this Agreement.

10.2 Indemnification. The Seller agrees to indemnify and save harmless the Company, its subsidiaries or affiliates, and their respective employees, officers, and directors, against any and all liability, loss, damage, cost or expense which the Company, its subsidiaries, affiliates, and their respective employees, officers, and directors may hereafter incur, suffer or be required to pay by reason of negligence on the part of the Seller in performing its obligations pursuant to this Agreement or the Seller's failure to abide by the provisions of this Agreement. The Company agrees to indemnify and save harmless the Seller against any and all liability, loss, damage, cost or expense which the Seller may hereafter incur, suffer or be required to pay by reason of negligence on the part of the Company in performing its obligations pursuant to this Agreement or the Company's failure to abide by the provision of this Agreement. The Seller agrees to include the Company as an additional named insured in any liability insurance policy or policies the Seller obtains to protect the Seller's interests with respect to the Seller's indemnity and hold harmless assurances to parties contained in this Section.

ISSUED BY: S. W. Connally, Jr





Section No. IX  
~~Third~~Fourth Revised Sheet No. 9.112  
Canceling ~~Second~~Third Revised Sheet No. 9.112

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(Continued from Standard Offer Contract, Sheet No. 9.111)

due to actions of the Seller, its agents, or force majeure events affecting the Facility or the interconnection with the Company. The Company agrees to reactivate at its own cost the interconnection with the Facility in circumstances where any interruptions to such interconnections are caused by the Company or its agents.

10.5 Assignment. The Seller shall have the right to assign its benefits under this Agreement, but the Seller shall not have the right to assign its obligations and duties without the Company's prior written approval.

10.6 Disclaimer. In executing this Agreement, the Company does not, nor should it be construed, to extend its credit or financial support for the benefit of any third parties lending money to or having other transactions with the Seller or any assignee of this Agreement.

10.7 Notification. For purposes of making any and all non-emergency oral and written notices, payments or the like required under the provisions of this Agreement, the parties designate the following 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 Seller:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

For Gulf Power Company:

~~Corporate Secretary and Treasurer~~  
Gulf Power Company  
One Energy Place  
Pensacola FL 32520-0780

10.8 Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida.

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

ISSUED BY: S. W. Connally, Jr.



# Exhibit C

**EXHIBIT C**

**ECONOMIC / FINANCIAL ASSUMPTIONS  
And K-FACTOR**

EXHIBIT C  
PAGE 1 of 2

GULF POWER COMPANY  
RENEWABLE STANDARD OFFER CONTRACT  
ECONOMIC ASSUMPTIONS

AFUDC RATE 7.26 %

CAPITALIZATION RATIOS:

DEBT	<u>47.5</u>	%
PREFERRED	<u>0.0</u>	%
EQUITY	<u>52.5</u>	%

RATE OF RETURN

DEBT	<u>5.30</u>	%
PREFERRED	<u>0.00</u>	%
EQUITY	<u>10.25</u>	%

INCOME TAX RATE:

STATE	<u>5.5</u>	%
FEDERAL	<u>21.0</u>	%
EFFECTIVE	<u>25.3</u>	%

OTHER TAX RATE: Ad Valorem 0.891 %

DISCOUNT RATE: 7.28 %

TAX  
DEPRECIATION RATE: See adjacent table %

Tax Depreciation Rates

Year	CC
1	3.7500%
2	7.2188%
3	6.6773%
4	6.1765%
5	5.7133%
6	5.2848%
7	4.8884%
8	4.5218%
9	4.4615%
10	4.4615%
11	4.4615%
12	4.4615%
13	4.4615%
14	4.4615%
15	4.4615%
16	4.4615%
17	4.4615%
18	4.4615%
19	4.4615%
20	4.4615%
21	2.2311%

EXHIBIT C  
PAGE 2 of 2

GULF POWER COMPANY  
RENEWABLE STANDARD OFFER CONTRACT  
UNIT INFORMATION

PLANT TYPE:	Dual-Fuel 1-on-1 Combined Cycle
NET CAPACITY:	595 MW
BOOK LIFE (Years):	40
IN-SERVICE YEAR:	2024
TOTAL INSTALLED COST ('24 \$/kW):	1,223
DIRECT CONSTRUCTION COST ('18 \$	813
AFUDC AMOUNT (\$/kW):	334
ESCALATION (\$/kW):	76
FIXED O&M ('24 \$/kW - Yr): <sup>(A)</sup>	55.93
VARIABLE O&M ('24 \$/MWh):	1.58
K FACTOR:	1.2510

(A) Fixed O&M with Firm Gas Transportation cost



# Item 11

State of Florida



## Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD  
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

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**DATE:** May 23, 2018

**TO:** Office of Commission Clerk (Stauffer)

**FROM:** Division of Engineering (Wooten, Ellis, Wright) *SW) POE TB*  
Division of Economics (Wu) *Wu WPM*  
Office of the General Counsel (DuVal) *MD CM*

**RE:** Docket No. 20180082-EQ – Petition for approval of revisions to standard offer contract and rate schedule COG-2, by Tampa Electric Company.

**AGENDA:** 06/05/18 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

**COMMISSIONERS ASSIGNED:** All Commissioners

**PREHEARING OFFICER:** Administrative

**CRITICAL DATES:** None

**SPECIAL INSTRUCTIONS:** Staff recommends the Commission simultaneously consider Docket Nos. 20180073-EQ, 20180081-EQ, 20180082-EQ, 20180083-EQ, and 20180091-EQ.

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### Case Background

Section 366.91(3), Florida Statutes (F.S.), requires that each investor-owned utility (IOU) continuously offer to purchase capacity and energy from renewable energy generators and small qualifying facilities. Florida Public Service Commission (Commission) Rules 25-17.200 through 25-17.310, Florida Administrative Code (F.A.C.), implement the statute and require each IOU to file with the Commission, by April 1 of each year, a standard offer contract based on the next avoidable fossil fueled generating unit of each technology type identified in the Utility's current Ten-Year Site Plan. On April 2, 2018, Tampa Electric Company (TECO) filed a petition for

approval of its revised standard offer contract and rate schedule COG-2 based on its 2018 Ten-Year Site Plan.<sup>1</sup>

In its petition, TECO erroneously identified a 220 megawatt (MW) natural gas-fueled combustion turbine (CT) with an in-service date of January 1, 2023, as its next avoidable unit. On April 9, 2018, TECO filed a letter which corrected its petition to reflect a 245 MW natural gas-fueled CT with an in-service date of January 1, 2023, bringing the petition in-line with TECO's revised standard offer contract and its 2018 Ten-Year Site Plan.<sup>2</sup> Revisions to TECO's standard offer contract and rate schedule COG-2 include updates to avoided unit specifications, calendar dates, and a monthly capacity payment example and its accompanying capacity payment parameters.

The Commission has jurisdiction over this standard offer contract pursuant to Sections 366.04 through 366.06 and 366.91, F.S.

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<sup>1</sup>April 2, 2018, was the first business day following the Sunday, April 1 deadline for standard offer contract filings.

<sup>2</sup>Document No. 02842-2018, filed April 9, 2018, in Docket No. 20180082-EQ.

### Discussion of Issues

**Issue 1:** Should the Commission approve the revised standard offer contract and associated rate schedule COG-2 filed by Tampa Electric Company?

**Recommendation:** Yes. The provisions of TECO's revised standard offer contract and associated rate schedule COG-2, as filed on April 2, 2018, conform to all requirements of Rules 25-17.200 through 25-17.310, F.A.C. The revised standard offer contract provides flexibility in the arrangements for payments so that a developer of renewable generation may select the payment stream best suited to its financial needs. (Wright)

**Staff Analysis:** Rule 25-17.250, F.A.C., requires that TECO, an IOU, continuously make available a standard offer contract for the purchase of firm capacity and energy from renewable generating facilities (RF) and small qualifying facilities (QF) with design capacities of 100 kilowatts (kW) or less. Pursuant to Rule 25-17.250(1) and (3), F.A.C., the standard offer contract must provide a term of at least 10 years, and the payment terms must be based on the Utility's next avoidable fossil-fueled generating unit identified in its most recent Ten-Year Site Plan or, if no avoided unit is identified, its next avoidable planned purchase. TECO has identified a 245 MW natural gas-fueled CT as its next planned generating unit in its 2018 Ten-Year Site Plan. The projected in-service date of the unit is January 1, 2023.

The RF/QF operator may elect to make no commitment as to the quantity or timing of its deliveries to TECO, and to have a committed capacity of zero (0) MW. Under such a scenario, the energy is delivered on an as-available basis and the operator receives only an energy payment. Alternatively, the RF/QF operator may elect to commit to certain minimum performance requirements based on the identified avoided unit, such as being operational and delivering an agreed upon amount of capacity by the in-service date of the avoided unit, and thereby becomes eligible for capacity payments in addition to payments received for energy. The standard offer contract may also serve as a starting point for negotiation of contract terms by providing payment information to an RF/QF operator, in a situation where one or both parties desire particular contract terms other than those established in the standard offer.

In order to promote renewable generation, the Commission requires each IOU to offer multiple options for capacity payments, including the options to receive early or levelized payments. If the RF/QF operator elects to receive capacity payments under the normal or levelized contract options, it will receive as-available energy payments only until the in-service date of the avoided unit (in this case January 1, 2023), and thereafter begin receiving capacity payments in addition to the energy payments. If either the early or early levelized option is selected, then the operator will begin receiving capacity payments earlier than the in-service date of the avoided unit. However, payments made under the early capacity payments options tend to be lower in the later years of the contract term because the net present value (NPV) of the total payments must remain equal for all contract payment options.



Table 1 below contains estimates of the annual payments for each payment option available under the revised standard offer contract to an operator with a 50 MW renewable facility operating at a capacity factor of 80 percent, which is the minimum capacity factor required under the contract to qualify for full capacity payments. Normal and levelized capacity payments begin in 2023, reflecting the projected in-service date of the avoided unit (January 1, 2023).

**Table 1 – Estimated Annual Payments to a 50 MW Renewable Facility  
(80% Capacity Factor)**

Year	Energy Payment	Capacity Payment (By Type)			
		Normal	Levelized	Early	Early Levelized
	\$(000)	\$(000)	\$(000)	\$(000)	\$(000)
2019	9,115	-	-	1,953	2,301
2020	10,135	-	-	2,000	2,306
2021	10,036	-	-	2,048	2,311
2022	10,469	-	-	2,097	2,316
2023	10,988	1,980	2,266	2,147	2,321
2024	11,216	3,017	3,404	2,199	2,327
2025	12,235	3,090	3,412	2,251	2,332
2026	12,763	3,164	3,420	2,305	2,338
2027	13,223	3,240	3,428	2,361	2,344
2028	14,749	3,318	3,436	2,417	2,350
2029	15,509	3,397	3,444	2,475	2,356
2030	16,982	3,479	3,453	2,535	2,362
2031	17,767	3,562	3,462	2,596	2,369
2032	19,476	3,648	3,471	2,658	2,375
2033	19,982	3,735	3,480	2,722	2,382
2034	21,772	3,825	3,489	2,787	2,389
2035	22,629	3,917	3,499	2,854	2,396
2036	23,259	4,011	3,509	2,922	2,403
2037	25,072	4,107	3,519	2,993	2,410
2038	24,658	4,206	3,529	3,064	2,418
<b>Total</b>	322,037	55,694	54,218	49,384	47,105
<b>NPV (2018\$)</b>	159,833	26,401	26,401	26,401	26,401

Source: TECO's revised response to staff's first data request.<sup>3</sup>

<sup>3</sup>Document No. 03640-2018, filed May 11, 2018, in Docket No. 20180082-EQ.

The type-and-strike format versions of the revised standard offer contract and associated rate schedule COG-2 are included as Attachment A to this recommendation. All of the changes made to TECO's tariff sheets are consistent with the updated avoided unit. Revisions include updates to avoided unit specifications, calendar dates, and a monthly capacity payment example and its accompanying capacity payment parameters.

### **Conclusion**

The provisions of TECO's revised standard offer contract and associated rate schedule COG-2, as filed on April 2, 2018, conform to all requirements of Rules 25-17.200 through 25-17.310, F.A.C. The revised standard offer contract provides flexibility in the arrangements for payments so that a developer of renewable generation may select the payment stream best suited to its financial needs. Staff recommends that the revisions to the rate schedule and standard offer contract be approved.

**Issue 2:** Should this docket be closed?

**Recommendation:** Yes. This docket should be closed upon issuance of a consummating order, unless a person whose substantial interests are affected by the Commission's decision files a protest within 21 days of the issuance of the Commission's Proposed Agency Action Order. Potential signatories should be aware that, if a timely protest is filed, TECO's standard offer contract may subsequently be revised. (DuVal)

**Staff Analysis:** This docket should be closed upon the issuance of a consummating order, unless a person whose substantial interests are affected by the Commission's decision files a protest within 21 days of the issuance of the Commission's Proposed Agency Action Order. Potential signatories should be aware that, if a timely protest is filed, TECO's standard offer contract may subsequently be revised.



ORIGINAL SHEET NO. 8.202

**STANDARD OFFER CONTRACT FOR THE PURCHASE OF  
CONTRACTED CAPACITY AND ASSOCIATED ENERGY FROM  
A RENEWABLE GENERATING FACILITY OR A SMALL QUALIFYING FACILITY**

This standard offer contract ("Contract") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ by and between \_\_\_\_\_, the owner and/or operator of a Facility, as defined below, hereinafter referred to as the "Capacity and Energy Provider" or "CEP" and Tampa Electric Company, a private utility corporation organized under the laws of the State of Florida (hereinafter referred to as the "Company"). The following documents are attached to this Contract and incorporated herein by reference: Appendix I, Evaluation Procedure for Standard Offer Contracts; Appendix II, COG -2 Standard Offer Contract Rate for Purchase of Contracted Capacity and Associated Energy, including all attached appendices thereto; and Appendix III, Interconnection Agreement. The CEP and the Company are also identified hereinafter individually, as a "Party" and collectively, as the "Parties". This Contract may also be referred to herein as the "Standard Offer Contract."

**WITNESSETH:**

**WHEREAS**, the CEP is the owner and/or operator of a Facility; and

**WHEREAS**, the CEP desires to sell Contracted Capacity and Associated Energy, as those terms are defined below; and

**WHEREAS**, the Company desires to purchase Contracted Capacity and Associated Energy in accordance with Chapter 366.91 F.S. and Florida Public Service Commission (FPSC) Rules 25-17.080 through 25-17.310, Florida Administrative Code (F.A.C.) and the Company's Rate Schedule COG-2; and

**WHEREAS**, the CEP has signed an Interconnection Agreement with the transmission service provider that serves the CEP's Facility, as defined below; and

**WHEREAS**, such Interconnection Agreement is attached and incorporated hereto as Appendix III; and

**ISSUED BY:** C. R. Black, President

**DATE EFFECTIVE:** May 22, 2007





FIRST REVISED SHEET NO. 8.204  
CANCELS ORIGINAL SHEET NO. 8.204

WHEREAS, the Florida Public Service Commission ("FPSC") has approved the form of this Contract for the purchase of Contracted Capacity and Associated Energy from the CEP;

NOW, THEREFORE, in consideration of the mutual covenants and promises set forth herein and other good and valuable considerations the receipt and adequacy of which are hereby acknowledged, the Parties agree as follows:

1. **Definitions:**

- a. **Actual Capacity:** "Actual Capacity" shall mean the amount of Anticipated Capacity, as defined below, that can be made available to the Company at the Delivery Point and which the CEP has confirmed: (1) through performance testing prior to the Commercial In-Service Date, as defined below; and (2) at any time thereafter upon the Company's request.
- b. **Anticipated Capacity:** "Anticipated Capacity" shall mean the amount of capacity that the CEP intends to make available to the Company at the Delivery Point in \_\_\_\_\_ kW or in \_\_\_\_\_ MW from the Facility beginning on or before \_\_\_\_\_, the in-service date of the Designated Avoided Unit, as defined below.
- c. **Associated Energy:** "Associated Energy" shall mean the energy generated at the Facility, as defined below, by the generating source designated to supply Contracted Capacity and which is delivered to the Company at the Delivery Point, as defined below.
- d. **Company Transmission Service:** "Company Transmission Service" shall mean the network transmission service required through the Company's transmission system to deliver Associated Energy from the Delivery Point to the Company's native load customers.
- e. **Construction Commencement Date:** "Construction Commencement Date" shall mean the date on which the CEP's: (1) on-site activity is coordinated and continuous; and (2) active construction efforts are undertaken and on-going relative to the actual construction of major project features other than site preparation work; provided, however, that such date shall occur no later than \_\_\_\_\_.

ISSUED BY: C. R. Black, President

DATE EFFECTIVE: July 29, 2008



FIRST REVISED SHEET NO. 8.206  
CANCELS ORIGINAL SHEET NO. 8.206

- f. **Contracted Capacity:** "Contracted Capacity" shall mean the amount of Actual Capacity in \_\_\_\_\_ kW or in \_\_\_\_\_ MW that the CEP commits to reserve, make available and supply to the Company from its Facility on a firm, first-call, subordinate-to-no-other-entity-or-party, on-call, as-needed basis, and for which the Company commits to pay the CEP.
- g. **Delivery Point:** "Delivery Point" shall mean: (1) the Interconnection Point, as described below, if the Facility is directly interconnected to the Company's transmission system; or (2) a point on the Company's transmission system, mutually agreed to by the Parties, at which the CEP shall deliver Contracted Capacity and Associated Energy via a third-party transmission service provider, if the Facility is not directly interconnected to the Company's transmission system.
- h. **Designated Avoided Unit:** "Designated Avoided Unit." shall mean the generating unit, from among those units identified in the Appendices C through F to the Company's COG-2 Tariff as the Company's avoided units, selected by the CEP as the unit the CEP wishes to help avoid, or defer, and upon which capacity and energy payments to the CEP will be based. The CEP selects the Designated Avoided Unit from Appendix \_\_\_\_\_ of Rate Schedule COG-2.
- i. **Eastern Prevailing Time:** "Eastern Prevailing Time" or "EPT" shall mean the time in effect in the Eastern Time Zone of the United States of America, whether Eastern Standard Time or Eastern Daylight Time.
- j. **Evaluation Procedure:** "Evaluation Procedure" shall mean the procedure used by the Company to evaluate each eligible standard offer contract received by the Company as to its technical reliability, viability and financial stability, as well as other relevant information, in accordance with FPSC Rule 25-17.0832, F.A.C., and the Company's Procedure for Processing Standard Offer Contracts as defined in Rate Schedule COG-2. The criteria used to evaluate standard offer contracts are attached hereto as Appendix I.
- k. **Extended Facility In-Service Date:** "Extended Facility In-Service Date" shall mean an extension of the Facility In-Service Date, as defined below, for a period not to exceed five (5) months which may be granted in accordance with Section 7 below.

ISSUED BY: C. R. Black, President

DATE EFFECTIVE: July 29, 2008



FIRST REVISED SHEET NO. 8.208  
CANCELS ORIGINAL SHEET NO. 8.208

- l. **Facility:** "Facility" shall mean the CEP's proposed generating facility described in greater detail in Section 2, below.
- m. **Facility In-Service Date:** "Facility In-Service Date" shall mean the date on which the Facility is available to supply Contracted Capacity and deliver Associated Energy to the Company (also referred to in the electric power industry as the commercial in-service date or commercial operation date).
- n. **FERC:** "FERC" shall mean the Federal Energy Regulatory Commission or any similar or successor governmental body exercising the same or equivalent jurisdiction.
- o. **Interconnection Point:** "Interconnection Point" shall mean the plant busbar connection to the high side of the Facility's step-up transformer(s) where Contract Capacity and Associated Energy shall be delivered to the transmission service provider that serves the Facility. The Interconnection Point shall be specified in detail in the Interconnection Agreement (see Appendix III).
- p. **Non-Dispatched Capacity:** "Non-Dispatched Capacity" shall mean the amount of Contracted Capacity that the Company declines to schedule or request during any given hour, due to an emergency condition, or any other condition/reason. The Company shall adjust the Dispatch Schedule, as defined below, as soon as practical to reflect the amount of Non-Dispatched Capacity, or ignore scheduled capacity levels altogether (if conditions require immediate action to protect the integrity and/or reliability of the Company's generating system and/or transmission system); however, the Company shall make reasonable efforts to minimize departures from the Dispatch Schedule.
- q. **Non-Dispatched Energy:** "Non-Dispatched Energy" shall mean the energy associated with Non-Dispatched Capacity and which the Company declines to accept during any given hour, due to an emergency condition, or any other condition/reason.
- r. **Qualifying Facility:** "Qualifying Facility" shall mean a cogeneration facility, or small power production facility, that satisfies the definition of, and qualifies as, a Qualifying Facility in accordance with the provisions of Subpart B of Subchapter K, Part 292 of Chapter I, Title 18, Code of Federal Regulations (C.F.R.), promulgated by the FERC, as the same may be amended from time to time, and must be "new capacity" pursuant to the Public Utilities Regulatory Policies Act of 1978 (PURPA), construction of which began on or after November 9, 1978.

ISSUED BY: C. R. Black, President

DATE EFFECTIVE: July 29, 2008



FIRST REVISED SHEET NO. 8.212  
CANCELS ORIGINAL SHEET NO. 8.212

- s. **Renewable Generating Facility:** "Renewable Generating Facility" shall mean a generating facility that satisfies the definition of, and qualifies as, a renewable generating facility in accordance with the provisions of Section 366.91, Florida Statutes and Rule 25-17.210 (1), F.A.C.
  - t. **Small Qualifying Facility:** "Small Qualifying Facility" shall mean a Qualifying Facility with a design capacity of 100 kW or less, as defined by subsection 25-17.080(3), F.A. C.
  - u. **Third-Party Transmission Services:** "Third-Party Transmission Services" shall mean the firm transmission service(s) and ancillary services required to deliver Contracted Capacity and Associated Energy from the Facility to the Company's transmission system if the Facility is not directly interconnected to the Company's transmission system.
2. **CEP's Proposed Facility:** The CEP contemplates installing and operating a Facility designed to produce a maximum of \_\_\_\_\_ kilowatts (kW) to be located at \_\_\_\_\_, which shall be and remain the specific site of the Facility providing Contracted Capacity and Associated Energy under this Contract throughout the Term, as described below, of this Contract. The Facility is designed, operated and controlled to satisfy the interconnection requirements of the Company's transmission system or the third-party transmission service provider that serves the Facility, as applicable. The Facility shall: (a) satisfy the Company's Open Access Transmission Tariff ("OATT") requirements and/or all non-FERC jurisdictional interconnection and/or transmission service agreements required by the CEP to deliver Contracted Capacity and Associated Energy to the Company, as applicable, to be designated a Company network resource and receive network transmission service from the Company; (b) be fully dispatchable in the manner set forth in Appendix \_\_\_ of Rate Schedule COG-2; and (c) be an existing Renewable Generating Facility or a Small Qualifying Facility or a Renewable Generating Facility or a Small Qualifying Facility that the CEP proposes to construct and operate.
3. **Term:** The "Term" of this Contract shall commence immediately upon its execution by the Parties and shall terminate at 12:01 A.M. on the later of: (a) the last day of the tenth year following the in-service date of the avoided unit, or (b) \_\_\_\_\_ (a date selected by the CEP provided that such date is no later than the day after the last day of the life of the avoided unit identified in Section 1h above).

ISSUED BY: C. R. Black, President

DATE EFFECTIVE: July 29, 2008





FIRST REVISED SHEET NO. 8.214  
CANCELS ORIGINAL SHEET NO. 8.214

4. **Company's Capacity and Energy Purchase Commitment:** The Company agrees to purchase all Contracted Capacity and Associated Energy, excluding Non-Dispatched Energy, generated at the Facility and provided to the Company at the Delivery Point by the CEP pursuant to this Contract, excluding the amount of capacity and energy consumed by the Facility's station service equipment (such as generator auxiliaries, emissions control and monitoring equipment, fuel handling equipment, etc.) and all transmission system losses incurred by the CEP to effect delivery of Contracted Capacity and Associated Energy to the Delivery Point.
5. **Non-Dispatched Capacity and Non-Dispatched Energy Restriction:** To the extent that there is Non-Dispatched Capacity and Non-Dispatched Energy during a given hour, such Non-Dispatched Capacity and Non-Dispatched Energy shall not be made available or sold by the CEP, or otherwise used in any way or disposed of, without the Company's prior written consent.
6. **Responsibilities for Interconnection Service, Third-Party Transmission Service and Company Transmission Service:** It is the responsibility of the CEP to request and secure the required interconnection service from the transmission service provider that serves the CEP's Facility, whether a third-party transmission service provider or the Company transmission service provider. If the Facility is not located within the Company's transmission system, it is the responsibility of the CEP to request and secure the required third-party transmission service(s) required to deliver Contracted Capacity and Associated Energy to the Company's transmission system. It is the responsibility of the CEP to: (i) satisfy the third-party transmission provider's, or the Company's, OATT requirements and/or all non-FERC jurisdictional interconnection and/or transmission service agreements required by the CEP to deliver Contracted Capacity and Associated Energy to the Company, as applicable; (ii) arrange and pay to interconnect the Facility to the third-party transmission service provider; (iii) become and continue to be an eligible customer under the third-party transmission provider's OATT, or the Company's OATT, as applicable, during the Term; and (iv) request and purchase all required firm Third-Party Transmission Services and interconnection service, if applicable, in a timely manner to satisfy the provisions of this Contract.

If the Facility is located within the Company's transmission system, it is the responsibility of the Company to request and secure the network transmission service required to deliver Contracted Capacity and Associated Energy from the Delivery Point to the Company's native load customers. It is the responsibility of the Company to request and secure network transmission service in a timely manner to satisfy the provisions of this Contract.

ISSUED BY: C. R. Black, President

DATE EFFECTIVE: July 29, 2008



SIXTEENTH REVISED SHEET NO. 8.215  
CANCELS FIFTEENTH REVISED SHEET NO. 8.215

Continued from Sheet No. 8.214

7. **Extension of Facility In-Service Date:** The CEP may request and the Company may grant, at its sole discretion, an Extended Facility In-Service Date provided, however, that the CEP shall be subject to the applicable provisions of the Completion Security subsection of the Security Guarantees section of this Contract. If the Facility In-Service Date is delayed and an Extended Facility In-Service Date has not been granted, or the Extended Facility In-Service Date is not satisfied, the CEP shall be subject to the applicable provisions of the Completion Security subsection of the Security Guarantees section of this Contract, which may be requested by the CEP and may be granted by the Company, at its sole discretion.
8. **Billing Methodology:** The billing methodology applicable to the Company's purchase, and the CEP's sale, of Contract Capacity and Associated Energy pursuant to this Contract shall be: (i) ( ) Net Billing Arrangement; or (ii) ( ) Simultaneous Purchase and Sale Arrangement, such purchases being arranged from the interconnecting utility and sales being made to the Company. Once made, the selection of a billing methodology may only be changed in accordance with FPSC Rule 25-17.082, F.A.C., and shall be in accordance with the following provisions:
  - a. upon at least 30 days advance written notice to the Company; and
  - b. upon installation by the Company of any additional metering equipment reasonably required to effect the change in billing methodology; and
  - c. upon payment by the CEP for such metering equipment and its installation; and
  - d. upon the Company's approval and completion of any alterations to the Interconnection Point that are reasonably required to effect the change in billing methodology and upon payment by the CEP for such alterations.

The Parties agree that the CEP's obligation to generate and sell Contracted Capacity and Associated Energy from the Facility is subject to both scheduled and unscheduled outages of the Facility and the transmission service(s) required to effect delivery of same to the Delivery Point. Neither Party shall be required to compensate the other Party for Contracted Capacity and Associated Energy which from time to time may not be generated and sold by the CEP, or received and purchased by the Company, as a result of such scheduled and unscheduled outages. The Parties agree to use best efforts to minimize the duration of any scheduled or unscheduled outages which from time to time may interrupt the purchase and sale of Contracted Capacity and Associated Energy under this Contract.

Continued to Sheet No. 8.216

ISSUED BY: C. R. Black, President

DATE EFFECTIVE: June 30, 2009



SECOND REVISED SHEET NO. 8.216  
CANCELS FIRST REVISED SHEET NO. 8.216

Continued from Sheet No. 8.215

9. **Payment:**

a. **Associated Energy Payment:** The Company agrees to pay the CEP for Associate Energy delivered to the Company at the Delivery Point in accordance with the energy payment options, rates, and procedures contained in Rate Schedule COG-2 attached hereto as Appendix II.

i. **Standard Energy Payments:** Associated Energy payments made prior to \_\_\_\_\_, shall be based on the Company's actual avoided energy costs as defined in Appendix B of Rate Schedule COG-2.

Beginning \_\_\_\_\_, to the extent that the Designated Avoided Unit would have been operated had it been installed by the Company, the CEP's Associated Energy payments will be based on the Company's Designated Avoided Unit's energy costs as calculated in Appendix - \_\_\_\_ of Rate Schedule COG-2, otherwise the CEP's Associated Energy payment will be based on the Company's actual avoided energy costs. The determination of which energy cost shall be applied will be made hourly.

ii. **Fixed Energy Payments:** The CEP does \_\_\_\_\_ does not \_\_\_\_\_ request fixed Associated Energy payments as follows:

\_\_\_\_ Yes \_\_\_\_\_ No, as to Associated Energy payments made prior to \_\_\_\_\_, which, if requested, shall be based on the Company's year-by-year projection of system incremental fuel costs prior to hourly economy energy sales to other utilities, based on normal weather and fuel market conditions, plus a fuel market volatility risk premium mutually agreed to by Tampa Electric and the CEP, which projected system incremental fuel costs will be provided by the Company within 30 days of the date of request by the CEP. The CEP and Tampa agree to the following fuel market volatility risk premium(s): \_\_\_\_\_.

\_\_\_\_ Yes \_\_\_\_\_ No, as to Associated Energy payments, calculated as follows: Subsequent to the determination of full avoided cost and subject to the provisions of paragraphs 25-17.0823(3)(a) through (d) F.A.C., a portion of the base energy costs associated with the avoided unit, mutually agreed upon by the Company and the CEP, shall be fixed and amortized on a present value basis over this Contract commencing, at the election of the CEP, as early as the in-service date of the CEP's Facility. "Base energy costs associated with the avoided unit" means the energy costs

Continued to Sheet No. 8.218

ISSUED BY: C. R. Black, President

DATE EFFECTIVE: June 30, 2009



ORIGINAL SHEET NO. 8.218

of the avoided unit to the extent that the Designated Avoided Unit would have been operated.

The stream of Fixed Energy Payments to the CEP, calculated as stated above, will be provided by the Company within 30 days of the date of request by the CEP.

**b. Contracted Capacity Payment:**

- i. **Dispatch Requirements:** In order to receive a Contracted Capacity Payment for each calendar month that the Facility is to be dispatched, the CEP must meet or exceed both the minimum Monthly Availability and Monthly Capacity Factor requirements.
- ii. **Commencement of Contracted Capacity Payments:** The CEP elects to receive, and the Company agrees to commence calculating, Contracted Capacity payments in accordance with this Contract starting with the first Monthly Period following \_\_\_\_\_.
- iii. **Contracted Capacity Payment Options:** The following five (5) options are available to the CEP for payment of Contracted Capacity delivered by the CEP:
  1. Value of Deferral Capacity Payments;
  2. Early Capacity Payments;
  3. Levelized Capacity Payments;
  4. Early Levelized Capacity Payments; or
  5. Other Contracted Capacity Payment Option agreed upon by the Parties that best satisfies the financing requirements of the Facility. Such Other Contracted Capacity Payment Option is described as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

The CEP elects to receive Contracted Capacity payments pursuant to option \_\_\_\_\_ above.

The CEP \_\_\_\_\_ does \_\_\_\_\_ does not elect to have Early Capacity Payments consisting of the capital component of the Company's Designated Avoided Unit commence on \_\_\_\_\_ (a date any time after the actual Facility In-Service date and before the anticipated in-service date of the Company's Designated Avoided Unit).

ISSUED BY: C. R. Black, President

DATE EFFECTIVE: May 22, 2007





FIRST REVISED SHEET NO. 8.222  
CANCELS ORIGINAL SHEET NO. 8.222

Regardless of the Contracted Capacity Payment Option elected by the CEP, the cumulative present value of payments for the Contracted Capacity made to the CEP over the Term shall not exceed the cumulative present value of payments for the Contracted Capacity which would have been made to the CEP had such payments been made pursuant to subparagraph 25-17.0832(4)(g)1., F.A.C. All fixed operation and maintenance expense shall be calculated in conformance with subsection 25-17.0832(6), F.A.C.

At the end of each Monthly Period, beginning with the Monthly Period specified in Section 9.b.ii, the Company will calculate the CEP's Monthly Availability and Capacity Factor. During the Term, if the CEP's Monthly Availability and Capacity Factor equals or exceeds the Minimum Performance Standards (MPS) as set forth for in Rate Schedule COG-2, Appendix \_\_, then the Company agrees to pay the CEP a Monthly Capacity Payment as calculated in paragraph 5 of the section entitled Basis for Monthly Capacity Payment Calculation in Appendix \_\_ of Rate Schedule COG-2.

The Contracted Capacity payment for a given month during the Term will be added to the Associated Energy payment for such month and tendered by the Company to the CEP as a single payment as promptly as possible, normally by the 20<sup>th</sup> business day following the day the meter is read or the amount of Associated Energy delivered via the third-party transmission service provider is confirmed by the Company.

10. **Other Contracted Capacity Payment Security Guarantees:** If the CEP selects Option 5 under the Contracted Capacity Payment Options, the following security guarantees will be required:  
\_\_\_\_\_.
11. **Construction and Performance Security Guarantees:** The Company requires certain security guarantees to ensure the completion of construction and performance under this Contract in order to protect its ratepayers in the event the CEP fails to deliver Contracted Capacity and Associated Energy in the amount and times specified in this Contract, which shall be in form and substance as described herein. Such security may be refunded in the manner described in Sections 11.a. and 11.b. Pursuant to FPSC Rule 25-17.091, F.A.C., a utility may not require security guarantees from a Municipal Solid Waste Facility as required in FPSC Rule 25-17.0832(2)(d) and (3)(f)(1), F.A.C. However, at its option, a Municipal Solid Waste Facility may provide such risk-related guarantees.

ISSUED BY: C. R. Black, President

DATE EFFECTIVE: July 29, 2008



SECOND REVISED SHEET NO. 8.224  
CANCELS FIRST REVISED SHEET NO. 8.224

Continued from Sheet No. 8.222

- a. **Completion Security:** If the CEP or its guarantor, if any, does not qualify for unsecured credit in Company's reasonable sole discretion, the CEP shall pay to the Company a security deposit equal to \$30.00 per kilowatt (\$30.00/kW) of Contracted Capacity as security for the CEP's completion of the Facility by the Facility In-Service Date. Such security will be required within sixty (60) days of execution of this Contract. Such security shall be in the form of cash deposited in an interest bearing escrow account mutually acceptable to the Company and the CEP; an unconditional and irrevocable direct pay letter of credit in form and substance satisfactory to the Company; or a performance bond in form and substance satisfactory to the Company. The form of security required will be in the sole discretion of the Company and will be in such form as to allow the Company immediate access to the funds in the event that the CEP fails to complete the construction and achieve commercial in-service status by the Facility In-Service Date.

If the Facility In-Service Date is achieved, then the entire deposit and any interest therein, if applicable, shall be refunded to the CEP upon payment by the CEP of the Performance Security as required in Section 11.b.

If the Facility In-Service Date is delayed, the Company may, upon the request of the CEP, at its sole discretion, agree to an Extended Facility In-Service Date, in which case the Company shall be entitled to retain or draw down on an amount equal to twenty percent (20%) of the original deposit amount for each month (or portion thereof) that the Facility In-Service Date is delayed. If the Facility In-Service Date is delayed and an Extended Facility In-Service Date has not been granted or the Extended Facility In-Service Date is not satisfied or delayed beyond the Extended Facility In-Service Date, the Company shall retain all of the deposit and terminate this Contract.

Notwithstanding the foregoing if the CEP does not satisfy the Construction Commencement Date or the Facility In-Service Date as defined in COG-2 in accordance with the terms and conditions of this Contract, this Contract shall be rendered of no force and effect, except for those provisions of this Agreement that provide the Company rights and remedies as against CEP because of its failure to meet the Construction Commencement Date or the Facility In-Service Date.

Continued to Sheet No. 8.226

ISSUED BY: C. R. Black, President

DATE EFFECTIVE: June 30, 2009



FIRST REVISED SHEET NO. 8.226  
CANCELS ORIGINAL SHEET NO. 8.226

b. **Performance Security:** Within 60 days after the later of the Facility In-Service Date or the in-service date of the Designated Avoided Unit, the CEP shall pay the Company a deposit in the amount of \$30.00/kW of Contracted Capacity as security for the CEP's performance under this Contract. Such security deposit shall be provided in the same manner as the Completion Security deposit as described in Section 11.a. Such Performance Security shall be retained by the Company for 12 months from the later of the Facility In-Service Date or the in-service date of the Designated Avoided Unit.

If, at the end of the 12-month period so described, the Facility's 12-month average of each month's numerical value for both the monthly Availability Factor and the Monthly Capacity Factor meet the Minimum Performance Standards (MPS) for as set forth in Rate Schedule COG-2, Appendix \_\_, then the CEP shall be entitled to a refund of such deposit. However, if at the end of the first 12-month period, the Facility's 12-month average of each month's numerical value for both the Monthly Availability Factor and the Monthly Capacity Factor fail to meet the MPS, then the Company shall be entitled to retain or draw down 50% of such deposit and retain the remainder of the security for an additional 12-month period.

If, at the end of the 24<sup>th</sup> month, the Facility's 12-month average of each month's numerical value for both the Monthly Availability Factor and the Monthly Capacity Factor again fail to achieve the MPS, for the most recent 12-month period, then the Company shall be entitled to retain the remainder of the security and to terminate this Contract. However, if at the end of the 24<sup>th</sup> month, the Facility's 12-month average of each month's numerical value for both the Monthly Availability Factor and the Monthly Capacity Factor meet the MPS, for the most recent 12-month period, then the CEP shall be entitled to a refund of the remaining deposit.

For the purpose of this calculation, the 12-month average of a parameter shall be defined to equal the sum of each month's average numerical value for that parameter, for the most recent 12-month period, divided by 12.

12. **Liquidated Damages:** The Parties hereto agree that the Company would be substantially damaged in amounts that would be difficult or impossible to ascertain in the event that the CEP fails to satisfy the Facility In-Service Date or to provide a Facility which meets the MPS. In the event that the Company terminates this Contract for the CEP's failure to achieve the Facility In-Service Date or achieve the MPS once in service, the Company may retain all of the Completion or Performance Security as liquidated damages, not as penalty, in lieu of actual damages and the CEP hereby waives any defenses as to the validity of any such liquidated damages. In the event the

ISSUED BY: C. R. Black, President

DATE EFFECTIVE: July 29, 2008



FIRST REVISED SHEET NO. 8.228  
CANCELS ORIGINAL SHEET NO. 8.228

CEP defaults, it forfeits the aforesaid Completion or Performance Security. In addition thereto, the Company shall be entitled to pursue such equitable remedies against the CEP as may be available.

13. **Production and Maintenance Schedule:** During the Term, the CEP agrees to the following:
- a. The CEP shall provide the Company in writing prior to April 1st of each calendar year an estimate of the amount of electricity to be generated by the CEP and delivered to the Company for each month of the following calendar year, including the time, duration and magnitude of any planned outages of the Facility or reductions to the amount of Contracted Capacity that the CPE can make available at the Delivery Point.
  - b. By July 1st of each calendar year, the Company shall notify the CEP in writing whether the requested scheduled maintenance period(s) for the Facility are acceptable. If the Company cannot accept any of the requested period(s), the Company shall advise the CEP of the time period closest to the requested period(s) when the outage(s) can be scheduled. The CEP shall only schedule outages during periods approved by the Company and such approval shall not be unreasonably withheld. Once the schedule has been established and approved, either Party requesting a subsequent change in such schedule, except when such event is due to Force Majeure, must obtain approval for such change from the other Party. Such approval shall not be unreasonably withheld or delayed.
  - c. During the Term, the CEP shall employ qualified personnel for managing, operating and maintaining the Facility and for coordinating such with the Company. The CEP shall ensure that operating personnel are on duty at all times, twenty-four (24) clock hours per calendar day and seven (7) calendar days per week. Additionally, during the Term, the CEP shall operate and maintain the Facility in such a manner as to ensure compliance with its obligations hereunder.
  - d. The Company shall not be obligated to purchase and may require curtailed or reduced deliveries of Associated Energy, to the extent necessary to maintain the reliability and integrity of any part of the Company's system, or if the Company determines that a failure to do so is likely to endanger life or property, or is likely to result in significant disruption of electric service to the Company's Customers. The Company shall give the CEP prior notice, if practicable, of its intent to refuse, curtail or reduce the Company's acceptance of Associated Energy pursuant to this subsection and will act to minimize the frequency and duration of such occurrences.

ISSUED BY: C. R. Black, President

DATE EFFECTIVE: July 29, 2008





FIRST REVISED SHEET NO. 8.232  
CANCELS ORIGINAL SHEET NO. 8.232

- e. The Company shall not be required to accept or purchase Associated Energy during any period in which, due to operational circumstances, acceptance or purchase of such Associated Energy would result in the Company's incurring costs greater than those which it would incur by generating an equal additional amount of energy with its own resources. The Company shall give the CEP as much prior notice as practicable of its intent not to accept Associated Energy pursuant to this subsection.
  - f. The CEP shall promptly update the yearly generation schedule and maintenance schedule of the Facility as soon as any change to such schedules are determined to be necessary;
  - g. The CEP shall comply with reasonable requirements of the Company regarding day-to-day or hour-by-hour communications between the Parties relative to the performance of this Contract.
14. **Dispatch Procedure:** Commencing on the calendar day prior to the Facility In-Service Date or the Extended Facility In-Service Date, as applicable, and continuing each calendar day thereafter during the Term, by 7:00 A.M. EPT, the CEP shall electronically transmit the hour-by-hour amounts of Contracted Capacity expected to be available from the Facility the next day ("Available Schedule"). Commencing on the calendar day prior to the Facility In-Service Date or the Extended Facility In-Service Date, as applicable, and continuing each calendar day thereafter during the Term, by 3:00 P.M. EPT, the Company shall electronically transmit the hour-by-hour amounts of Contracted Capacity that the Company desires the CEP to dispatch from the Facility the next day based on the Available Schedule supplied at 7:00 A.M. EPT by the CEP ("Dispatch Schedule"). The CEP's Available Schedule and the Company's Dispatch Schedule for Fridays will include Saturday, Sunday, and Monday schedules. The CEP's Available Schedule and the Company's Dispatch Schedule during holiday periods will be similarly adjusted to include the holiday period. The CEP shall control and operate the Facility in accordance with the Company's Dispatch Schedule.

From time to time, the Company may be required to adjust the Dispatch Schedule, as described in the definition of Non-Dispatched Capacity, and/or the CEP may be required to adjust the Dispatch Schedule due to an unscheduled or forced outage of all, or a portion of, the Facility; however, each Party shall make reasonable efforts to minimize departures from the Dispatch Schedule.

ISSUED BY: C. R. Black, President

DATE EFFECTIVE: July 29, 2008



FIRST REVISED SHEET NO. 8.234  
CANCELS ORIGINAL SHEET NO. 8.234

15. **Additional Criteria:** The CEP shall comply with the reasonable requests of the Company regarding daily or hourly communications. Commencing on the calendar day prior to the Facility In-Service Date or the Extended Facility In-Service Date, as applicable, and continuing during the Term:
  - a. The CEP shall provide monthly generation estimates for the Facility by December 1 for the next calendar year; and
  - b. The CEP shall promptly update its yearly generation schedule for the Facility when any changes are determined necessary; and
  - c. The CEP shall agree to reduce generation from the Facility or take other appropriate action as requested by the Company for safety reasons or to preserve system integrity; and
  - d. The CEP shall coordinate scheduled outages of the Facility with the Company.
16. **Automatic Generation Control:** At the Company's discretion, the CEP will operate the Facility with Automatic Generation Control (AGC) equipment, speed governors, and voltage regulators in-service, except at such times when operational constraints of the equipment prevent AGC operation.
17. **CEP's Obligation if the CEP Receives Payments Pursuant to Contracted Capacity Payment Options 2, 3, 4, or 5:** The Parties recognize that Rule 25-17.0832, F. A. C., may require the repayment by the CEP of all, or a portion of any, Capacity Payments made to the CEP pursuant to Contracted Capacity Payment Options 2, 3, 4, or 5 of Section 9.b.iii if the CEP fails to perform pursuant to the terms and conditions of this Contract. To ensure that the CEP will satisfy its obligation to make any such repayments, the following provisions will apply:

The Company shall establish a Repayment Account to accrue the sum of the capacity payments that may have to be repaid by the CEP to the Company. Amounts shall be added to the Repayment Account each month through \_\_\_\_\_, in the amount of the Company's payments to the CEP for capacity delivered prior to \_\_\_\_\_. Beginning on \_\_\_\_\_, the difference between the

ISSUED BY: C. R. Black, President

DATE EFFECTIVE: July 29, 2008



~~FIFTH-SIXTH~~ REVISED SHEET NO.  
8.236  
CANCELS ~~FOURTH-FIFTH~~  
REVISED SHEET NO. 8.236

Continued from Sheet No. 8.234

Contracted Capacity payment made to the CEP and the "normal" Contracted Capacity payment calculated pursuant to Contracted Capacity payment option 1 (Value of Deferral Payments) in COG-2 will also be added each month to the Repayment Account, so long as the payment made to the CEP is greater than the monthly payment the CEP would have received if it had selected Contracted Capacity Payment Option 1 in Section 6.b.iii. The annual balance in the Repayment Account shall accrue interest at an annual rate of ~~6.9767.080~~%.

Also beginning on \_\_\_\_\_, at such time that the Monthly Contracted Capacity Payment made to the CEP, pursuant to the Contracted Capacity Payment Option selected, is less than the "normal" Monthly Contracted Capacity Payment in Capacity Payment Option 1 in COG-2, there shall be debited from the Repayment Account an Early Payment Offset Amount to reduce the balance in the Repayment Account. Such Early Payment Offset Amount shall be equal to the amount which the Company would have paid for capacity in that month if Contracted Capacity payments had been calculated pursuant to Contracted Capacity Payment Option 1 in COG-2 and the CEP had elected to begin receiving Contracted Capacity payments on \_\_\_\_\_, minus the Monthly Contracted Capacity Payment the Company makes to the CEP (assuming the MPS are met or exceeded), pursuant to the Contracted Capacity Payment Option chosen by the CEP in Section 6.b.ii.

The CEP shall owe the Company and be liable for the current balance in the Repayment Account. The Company agrees to notify the CEP monthly as to the current Repayment Account balance.

In the event of default by the CEP, the total Repayment Account balance shall become due and payable within twenty (20) business days of receipt of written notice, as reimbursement for the Early Contracted Capacity Payments made to the CEP by the Company. The CEP's obligation to reimburse the Company in the amount of the balance in the Repayment Account shall survive the termination of the CEP's Contract with the Company. Such reimbursement shall not be construed to constitute liquidated damages and shall in no way limit the right of the Company to pursue all its remedies at law or in equity against the CEP.

Continued to Sheet No. 8.238

ISSUED BY: ~~G. L. Gillette~~ N. G. Tower,  
President

DATE EFFECTIVE: ~~July 13, 2017~~



SECOND REVISED SHEET NO. 8.238  
CANCELS FIRST REVISED SHEET NO. 8.238

Prior to receipt of Contracted Capacity Payments pursuant to Contracted Capacity Payment Options 2, 3, 4, or 5, the CEP shall secure its obligation to repay any balance in the Repayment Account in the event the CEP defaults pursuant to this Contract. Such security shall be in the form of cash deposited in an interest bearing escrow account mutually acceptable to the Company and the CEP; an unconditional and irrevocable direct pay letter of credit in form and substance satisfactory to the Company; or a performance bond in form and substance satisfactory to the Company. The form of security required will be in the sole discretion of the Company and will be in such form as to allow the Company immediate access to the funds in the event of default by the CEP. Florida Statute 377.709(4) requires the local government to refund Early Contracted Capacity Payments should a Municipal Solid Waste Facility owned, operated by or on the behalf of a local government be abandoned, closed down or rendered illegal. Therefore a utility may not require risk-related guarantees from a Municipal Solid Waste Facility as required in FPSC Rule 25-17.0832(2)(c) and (3)(e)(8), F.A.C. However, at its option, a Municipal Solid Waste Facility may provide such risk-related guarantees.

18. **Ownership and Offering For Sale of Renewable Energy Attributes:** A CEP that owns and/or operates a Renewable Generating Facility retains any and all rights to own and sell any and all environmental attributes associated with the electrical generation of such Renewable Generating Facility, including but not limited to any and all renewable energy certificates, "green tags", or other tradeable environmental interests (collectively "RECs"), of any description. In the event that the CEP decides to sell any such environmental attributes during the term of this Contract, the CEP shall provide notice to the Company of its intent to sell such environmental attributes and provide the Company a reasonable opportunity to offer to purchase such environmental attributes.
19. **Changes in Environmental and Governmental Regulations:** This Contract may be reopened, at the election of either Party, as a result of new environmental and other regulatory requirements enacted during the Term that affect the Company's full avoided costs of the unit on which this Contract is based.
20. **Non-Performance Provisions:** The CEP shall not receive a Contracted Capacity payment during any month during the Term in which the CEP fails to meet the MPS for Monthly Availability and Monthly Capacity Factor of the Company's Designated Avoided Unit as defined in Rate Schedule COG-2, Appendix \_\_\_\_\_. In addition, if for any month starting \_\_\_\_\_, the CEP fails to achieve the MPS, and the Monthly Contracted Capacity Payment that would have been made to the CEP pursuant

ISSUED BY: C. R. Black, President

DATE EFFECTIVE: August 7, 2009





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CANCELS FIRST REVISED SHEET NO. 8.242

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to the Contracted Capacity payment option selected is less than the "normal" Monthly Contracted Capacity Payment had the CEP selected Option 1, then the CEP shall be liable for and shall pay the Company an amount equal to the Early Payment Offset Amount for the month; provided, however, that such calculation shall assume that the CEP satisfied the MPS. Any payments thus required of the CEP shall be separately invoiced by the Company to Energy Provider after each month for which such payment is due and shall be paid by the CEP within twenty (20) business days after receipt of such invoice by the CEP. Such payment shall be debited from the Capacity Account as an Early Payment Offset Amount provided that any such payment will not exceed the current balance in the Capacity Account.

21. **Default:**

a. **Mandatory Default:** The CEP shall be in default under this Contract if it:

- i. is dissolved (other than pursuant to a consolidation, amalgamation or merger); or
- ii. becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due; or
- iii. makes a general assignment, arrangement or composition with or for the benefit of its creditors; or
- iv. institutes or has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation, and, in the case of any such proceeding or petition instituted or presented against it, such proceeding or petition (a) results in a judgment of insolvency or bankruptcy or the entry of an order for relief or the making of an order for its winding-up or liquidation or (b) is not dismissed, discharged, stayed or restrained in each case within 30 days of the institution or presentation thereof; or
- v. seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all its assets; or

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- vi. has a secured party take possession of all or substantially all its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all its assets and such secured party maintains possession, or any such process is not dismissed, discharged, stayed or restrained, in each case within 30 days thereafter; or
  - vii. fails to perform in accordance with Section 11.b.
  - viii. fails to maintain its status as a Renewable Energy Facility or small Qualifying Facility as required herein; or
  - ix. fails to achieve, on both accounts, a minimum Monthly Availability Factor of fifty percent (50%) and fails to achieve a minimum Monthly Capacity Factor of fifty percent, during the same month, for twelve (12) consecutive months starting .
- b. **Optional Default:** The Company may declare the CEP to be in default if:
- i. at any time prior to \_\_\_\_\_, and after Monthly Contracted Capacity Payments have begun, the Company has sufficient reason to believe that the CEP is unable to deliver the entire amount of Contracted Capacity; or
  - ii. after Monthly Capacity Payments have begun, the CEP fails each month, for twenty-four (24) consecutive months, to meet the MPS; or
  - iii. the CEP refuses, is unable or anticipatorily breaches its obligation to deliver the entire amount of Contracted Capacity after \_\_\_\_\_.
- c. **Default Remedy:** In the event of default by the CEP, the total Repayment Account balance shall become due and payable within 20 business days of receipt of written notice, as reimbursement for the Early Capacity Payments made to the CEP by the Company. The CEP's obligation to reimburse the Company in the amount of the balance in the Repayment Account shall survive the termination of this Contract. Such reimbursement shall not be construed to constitute liquidated damages and shall in no way limit the right of the Company to pursue all its remedies at law or in equity against the CEP.

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**22. General Provisions:**

- a. **Permits:** The CEP hereby agrees to seek to obtain any and all governmental permits, certifications, or other authority the CEP is required to obtain as a prerequisite to engaging in the activities provided for in this Contract. The Company hereby agrees to seek to obtain, at the CEP's expense, any and all governmental permits, certifications or other authority the Company is required to obtain as a prerequisite to engaging in the activities described in this Contract
- b. **Indemnification:** The Company and the CEP shall each be responsible for its own facilities in ensuring adequate safeguards for other Company customers, the Company and Energy Provider personnel and equipment, and for the protection of its own generating system. The Company and the CEP shall each indemnify and save the other harmless from any and all claims, demands, costs, or expense for loss, damage, or injury to persons or property of the other caused by, arising out of, or resulting from:
  - i. any act or omission by a Party or that Party's contractors, agents, servants and employees in connection with the installation or operation of that Party's generation system or the operation thereof in connection with the other Party's system; and
  - ii. any defect in, failure of, or fault related to a Party's generation system; and
  - iii. the negligence of a Party or negligence of that Party's contractors, agents servants and employees; and
  - iv. any other event or act that is the result of, or proximately caused by a Party.
- c. **Insurance:** The CEP shall deliver to the Company, at least fifteen (15) days prior to the start of any interconnection work, a certificate of insurance certifying the CEP's coverage under a liability insurance policy issued by a reputable insurance company authorized to do business in the State of Florida naming the CEP as named insured, and the Company as an additional named insured, which policy shall contain a broad form contractual endorsement specifically covering the liabilities accepted under this Contract arising out of the interconnection to the Facility, or caused by operation of any of the Facility's equipment or by the CEP's failure to maintain its equipment in satisfactory and safe operating condition.

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- i. In subsequent years, a certificate of insurance renewal must be provided annually to the Company indicating the CEP's continued coverage as described herein. Renewal certification shall be sent to:  
  
Tampa Electric Company  
c/o Director of Risk Management  
Tampa Electric Company  
702 North Franklin Street (33602)  
P. O. Box 111  
Tampa, FL 33601
  - ii. The policy providing such coverage shall provide public liability insurance, including coverage for personal injury, death and property damage, in an amount not less than \$1,000,000 for each occurrence; provided however, if the CEP has insurance with limits greater than the minimum limits required herein, the CEP shall set any amount higher than the minimum limits required by the Company to satisfy the insurance requirements of this Contract.
  - iii. The above required policy shall be endorsed with a provision whereby the insurance company to notify the Company thirty (30) days prior to the effective date of any cancellation or material change in said policy.
  - iv. The CEP shall pay all premiums and other charges due on said policy and keep said policy in force during the entire period of interconnection with the Company or the Term if the Facility is not interconnected to the Company's transmission system.
- d. **Force Majeure:** If either Party shall be unable, by reason of Force Majeure, to carry out its obligations under this Contract, either wholly or in part, the Party so failing shall give written notice and full particulars of such cause or causes to the other Party as soon as possible after the occurrence of any such cause; and such obligations shall be suspended during the continuance of such hindrance, which, however, shall be remedied with all possible dispatch; and the obligations, terms and conditions of this Contract shall be extended for such period as may be necessary for the purpose of making good any suspension so caused. The term "Force Majeure" shall be taken to mean all acts of God, strikes, lockouts or other industrial disturbances at the manufacturing site of the major equipment components or the construction site, wars, blockades, insurrections, riots, arrests and restraints of rules

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and people, explosions, fires, floods, lightning, wind, perils of the sea, accidents to equipment or machinery or similar occurrences; provided, however that no occurrence may be claimed to be a Force Majeure occurrence if it is caused by the negligence or lack of due diligence on the part of the Party attempting to make such claim and specifically does not include interruption in fuel supply. The CEP agrees to pay the costs necessary to reactivate the Facility and/or the interconnection with the Company's system if the same are rendered inoperable due to actions of the CEP, its agents, or Force Majeure events affecting the Facility or the interconnection with the Company.

If the Facility is interconnected to the Company's transmission system, the Company agrees to reactivate at its own cost the interconnection with the Facility in circumstances where any interruptions to such interconnections are caused by the Company or its agents.

**e. Representations, Warranties, and Covenants of the CEP**

*The CEP represents and warrants that as of the date this Contract is executed:*

- i. **Organization, Standing and Qualification:** The CEP is a (corporation, partnership, or other, as applicable) duly organized and validly existing in good standing under the laws of 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 CEP 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 Company.
- ii. **Due Authorization, No Approvals, No Defaults, etc.:** Each of the execution, delivery and performance by the CEP of this Contract has been duly authorized by all necessary action on the part of the CEP, does not require any approval, except as has been heretofore obtained, of the (shareholders, partners, or others, as applicable) of the CEP or any consent of or approval from any trustee, lessor or holder of any indebtedness or other obligation of the CEP, except for such as have been duly obtained, and does not contravene or constitute a default under any law, the (articles of incorporation, bylaws, or other as applicable) of the CEP, or any agreement,

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judgment, injunction, order, decree or other instrument binding upon the CEP, or subject the Facility or any component part thereof to any lien other than as contemplated or permitted by this Contract.

- iii. **Compliance with Laws:** The CEP has knowledge of all laws and business practices that must be followed in performing its obligations under this Contract. The CEP 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 CEP or the Company. By entering into this Contract, the CEP represents and warrants that Facility is a renewable facility pursuant to Rule 25-17.210(1) and(2) F.A.C. or a QF with a design capacity of 100 kW, or less, pursuant to Rule 17.080 F.A.C. and confirms such representation and warranty with the signature of the CEP's authorized representative on this Contract.
- iv. **Governmental Approvals:** Except as expressly contemplated herein, neither the execution and delivery by the CEP of this Contract, nor the consummation by the CEP of any of the transactions 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 in respect of governmental authority, except in respect of 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 CEP has no reason to believe that the same will not be readily obtainable in the ordinary course of business upon due application therefore).
- v. **No Proceedings:** There are no actions, suits, proceedings or investigations pending or, to the knowledge of the CEP, 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 the CEP'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. The CEP has no knowledge of a violation or default with respect to any law which could result in any such materially adverse effect or impairment. CEP is not bankrupt and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or becoming bankrupt;
- f. **Conditions Precedent:** Notwithstanding any other provisions of this Contract including the provisions of Section 20.b, the Company shall have the right to terminate this Contract by notice to the CEP, without cause, liability or obligation, if

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one or more of the following conditions, after reasonable effort by the CEP, shall not have been or cannot be satisfied in the Company's good faith judgment, and in the time periods described below. The Company in its sole discretion may extend the CEP's time for satisfying these conditions if one or more of the events described below is pending as of such date and it is reasonable to expect that such event will be accomplished within sixty (60) days:

- i. The CEP satisfies the Construction Commencement Date;
- ii. If the Facility is a small Qualifying Facility, on or before the Facility In-Service Date: The CEP secures certification of the Facility as a Qualifying Facility as defined herein and as certified by the FERC.
- iii. If the Facility is a small Qualifying Facility, on or before the Facility In-Service Date, and at all times throughout the remaining Term, such Facility shall maintain its status as a Qualifying Facility as defined herein and as certified by the FERC. By the end of the first quarter of each calendar year, the CEP shall furnish the Company a notarized certificate by an officer of the CEP certifying that the Facility has continuously maintained qualifying status on a calendar year basis since the commencement of the Term.
- iv. Within 9 months after the effective date of this Contract: The CEP secures any and all land use and zoning approvals reasonably necessary to obtain construction financing and authorizes the commencement of construction of the Facility on a basis not substantially adverse to the Company;
- v. Within 9 months after the effective date of this Contract: The CEP has secured all other environmental and construction permits and other governmental approvals reasonably necessary to obtain construction financing and to begin construction of the Facility on a basis not substantially adverse to the Company;
- vi. Within 9 months after the effective date of this Contract: The CEP achieves closing of financing for construction of the Facility;
- vii. On or before \_\_\_\_\_, the CEP provides to the Company written evidence of the rights to adequate fuel supply for the Facility in a form satisfactory to the Company;

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- viii. Within 9 months after the effective date of this Contract: The CEP provides evidence in writing in a form satisfactory to the Company indicating and substantiating the ownership of or the right to use the real property at the specific site upon which the Facility will be located; and
- ix. Within 9 months after the effective date of this Contract: The CEP provides sufficient information satisfactory to the Company describing the technical capability and experience of the Facility's technology, including the environmental performance of the Facility.
- g. **Assignment:** The Company and the CEP shall have the right to assign its benefits under this Contract, but the CEP shall not have the right to assign its obligations and duties without the Company's prior written consent and such consent shall not be unreasonably withheld.
- h. **Disclaimer:** In executing this Contract, the Company does not, nor should it be construed, to extend its credit or financial support for the benefit of any third parties lending money to or having other transactions with the CEP or any assignee of this Contract.
- i. **Notification:** For purposes of making any and all non-emergency oral and written notices, payments or the like required under the provisions of this Contract, the Parties designate the following to be notified or to whom payment shall be sent until such time as either Party furnishes the other Party written instructions changing such designate.

For: the CEP

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

For: the Company

c/o Manager-Wholesale Contracts,  
Wholesale Marketing and Sales  
Tampa Electric Company  
702 North Franklin Street (33602)  
P.O. Box 111  
Tampa, Florida 33601

- j. **Governing Law and Jurisdiction:** This Contract shall be governed by and construed and enforced in accordance with the laws, rules, and regulations of the State of Florida and the Company's Tariff as may be modified, changed, or amended from time to time. With respect to any suit, action or proceedings relating to this Contract, each party irrevocably submits to the exclusive jurisdiction of the courts of the State of Florida and the United States District Court located in

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Hillsborough County in Tampa, Florida; and waives any objection which it may have at any time to the laying of venue of any Proceedings brought in any such court, waives any claim that such Proceedings have been brought in an inconvenient forum and further waives the right to object, with respect to such Proceedings, that such court does not have any jurisdiction over such party. Nothing shall prevent the Beneficiary from enforcing any related judgment against the Guarantor in any other jurisdiction.

- **k. Waiver of jury trial:** Each party waives, to the fullest extent permitted by applicable law, any and all rights it may have to a trial by jury in respect of any suit, action or proceeding relating to this agreement or any credit support document. Each party (i) certifies that no representative, agent or attorney of the other party or any credit support provider has represented, expressly or otherwise, that such other party would not, in the event of such a suit, action or proceeding, seek to enforce the foregoing waiver and (ii) acknowledges that it and the other party have been induced to enter into this agreement and provide for any credit support document, as applicable, by, among other things, the mutual waivers and certifications in this section.

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- l. Taxation:** In the event that the Company becomes liable for additional taxes, including interest and/or penalties arising from an Internal Revenue Services determination, through audit, ruling or other authority, that the Company's payments to the CEP for capacity under Options B, C, or D are not fully deductible when paid (additional tax liability), the Company may bill the CEP monthly for the costs, including carrying charges, interest and/or penalties, associated with the fact that all or a portion of these capacity payments are not currently deductible for federal and/or state income tax purposes. The Company, at its option, may offset these costs against amounts due the CEP hereunder. These costs would be calculated so as to place the Company in the same economic position in which it would have been if the entire capacity payments had been deductible in the period in which the payments were made. If the Company 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 the Company.
- m. Severability:** If any part of this Contract, for any reason, be declared invalid, or unenforceable by a court or public authority of appropriate jurisdiction, then such decision shall not affect the validity of the remainder of this Contract, which remainder shall remain in force and effect as if this Contract had been executed without the invalid or unenforceable portion.
- n. Complete Contract 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 to this Contract.
- o. Incorporation of Rate Schedule:** The Parties agree that this Contract shall be subject to all of the provisions contained in the Company's published Rate Schedule COG-2 as approved and on file with the FPSC. The Rate Schedule is incorporated herein by reference.
- p. Survival of Contract:** This Contract, as it may be amended from time to time, shall be binding and inure to the benefit of the Parties' respective successors-in-interest and legal representatives.

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ISSUED BY: C. R. Black, President

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- q. **Record Retention:** The CEP agrees to retain for a period of five (5) years from the date of termination hereof all records relating to the performance of its obligations hereunder, and to cause all CEP entities to retain for the same period all such records.
- r. **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.
- s. **Set-off:** The Company may at any time, but shall be under no obligation to, set off any and all sums due from the CEP against sums due to the CEP hereunder.
- t. **Assistance With the Company FIN 46R Compliance:** Accounting rules set forth in Financial Accounting Standards Board Interpretation No. 46 (Revised December 2003) ("FIN 46R"), as well as future amendments and interpretations of those rules, may require the Company to evaluate whether the CEP must be consolidated, as a variable interest entity (as defined in FIN 46R), in the financial statements of the Company. The CEP agrees to fully cooperate with the Company and make available to the Company all financial data and other information, as deemed necessary by the Company, to perform that evaluation on a timely basis at inception of the PPA and periodically as required by FIN 46R. If the result of a the evaluation under FIN 46R indicates that the CEP must be consolidated in the financial statements of the Company, the CEP agrees to provide financial statements, together with other required information, as determined by the Company, for inclusion in disclosures contained in the footnotes to the financial statements and in the Company's required filings with the Securities and Exchange Commission ("SEC"). The CEP shall provide this information to the Company in a timeframe consistent with the Company's earnings release and SEC filing schedules, to be determined at the Company's discretion. The CEP also agrees to fully cooperate with the Company and the Company's independent auditors in completing an assessment of the CEP's internal controls as required by the Sarbanes-Oxley Act of 2002 and in performing any audit procedures necessary for the independent auditors to issue their opinion on the consolidated financial statements of the Company. The Company will treat any information provided by the CEP in satisfying Section 22(s) as confidential information and shall only disclose such information to the extent required by accounting and SEC rules and any applicable laws.

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ISSUED BY: C. R. Black, President

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IN WITNESS WHEREOF, CEP and the Company have executed this Contract the day and year first above written.

WITNESSES:

\_\_\_\_\_  
Name of Capacity and Energy Provider

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

\_\_\_\_\_  
Its: \_\_\_\_\_

WITNESSES:

Tampa Electric Company

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

\_\_\_\_\_  
Its: \_\_\_\_\_

ISSUED BY: C. R. Black, President

DATE EFFECTIVE: May 22, 2007





ORIGINAL SHEET NO. 8.266

**EVALUATION PROCEDURE  
FOR STANDARD OFFER CONTRACTS**

Standard Offer Contracts shall be evaluated and then accepted based on meeting specific criteria. This Evaluation Procedure will insure the acceptance of Standard Offer Contracts that meet the Company's needs and are in the best interest of customers.

Each eligible Standard Offer Contract received by the Company will be evaluated as to its technical reliability, viability and financial stability, as well as other relevant information, in accordance with FPSC Rule 25-17.0832, F.A.C., and the Company's Procedure for Processing Standard Offer Contracts as defined in Rate Schedule COG-2.

Energy Providers submitting Standard Offer Contracts to the Company should, at the same time, submit specific information for each of the following evaluation criteria. Failure to provide this information may result in a determination of non-viability by the Company. Each eligible Standard Offer Contract received will be evaluated based upon the information provided in response to the following list of parameters:

**EVALUATION PARAMETERS:**

1. **Technical Viability:**
  - a. What is the technology being proposed?
  - b. Has the technology been demonstrated or commercially applied? Please explain.
  - c. Has the CEP previously utilized this technology elsewhere?
    - Construction: Please provide performance record and experience with project technology.
    - Operations: Please provide operator's experience and performance record in comparable facilities.
  - d. Has a project feasibility study been conducted by an Independent Engineer to assess the project technology and its potential effect on the project's financial results? Please explain.
  - e. What thermal efficiency must be maintained by the unit(s) in order to retain status as a qualifying facility ("QF")?
2. **Fuel Supply:**
  - a. What is the primary fuel type?
  - b. What are the annual fuel requirements? (primary/alternate)
  - c. Has primary fuel supply been secured? Is the fuel supply domestic, cross-border or foreign? What the term of the fuel supply agreement?
  - d. Is an alternate fuel required?

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- e. Has an alternate fuel supply been secured? Is the alternate fuel supply domestic, cross-border or foreign? What is the term of the alternate fuel supply agreement?
  - f. Have transportation arrangements for both primary and alternate fuels been secured (firm/interruptible, provide detail)?
  - g. Are the pricing terms of the fuel supply agreement(s) directly tied to the corresponding energy payments?
  - h. If the fuel is considered to be renewable, please describe the renewable nature of the fuel and the environmental impact of its production and use to generate power.
3. **Reliability:**
- a. Dispatchability: Will the Facility be dispatched on request or will it be base-loaded? Please explain.
  - b. QF Status: Has the project obtained FERC certification as a QF? Has application been made for FERC certification? Please explain.
  - c. Operations and Maintenance: Who will provide O&M for the Facility: (a) developer; or (b) third party? If third party, please provide the name and address of the third party that will be used and any information that would describe their capability to perform this role.
  - d. Thermal Energy Host: If project is QF, provide the following information regarding any thermal energy (e.g. steam) host associated with the project:
    - i. Please explain the importance of the energy, taken by the thermal energy host, to the overall operations of the thermal energy host.
    - ii. Are there adequate alternative candidates in close proximity to the Facility that could serve as a potential thermal energy host replacement?
    - iii. What is the minimum thermal energy "take" necessary for the project to maintain QF status?
    - iv. Has a thermal energy host been secured?
    - v. Is the thermal energy host already in existence?
    - vi. Is it a new thermal energy host? (Is it identifiable?)
    - vii. What are the thermal energy host's operating hours?
    - viii. Are the thermal energy host's business cycle or thermal requirements seasonal? If so explain.
  - e. Permits: What permits or licenses will be required for the project? Have the necessary permits or licenses been secured? What specific environmental considerations must the project meet?
  - f. Construction Schedule: Has a construction schedule including milestones been formulated? Please provide detail.

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- g. Site Control: Has the project's location been identified? Has the site been secured? Does the site require specific environmental considerations, i.e. wetlands, etc.? Please explain.
4. **Developer's Qualifications:**
- a. Project's Financial Stability: The Company will assess the creditworthiness of the project developer and/or its guarantor, if any, and determine in the Company's reasonable sole discretion if the project developer's level of unsecured credit is sufficient to provide the required Security to the Company. Please provide detail for the project developer or its guarantor, if any: (a) audited year-end financial statements (including balance sheet, income statement, and statement of cash flows) for the past three fiscal years, and (b) senior unsecured bond ratings from Moody's Investors Service and Standard and Poor's, if applicable.
  - b. Developer's Experience: Has developer any projects in operation? Has developer any other projects under construction? Please provide details for each previous Independent Power Production or QF projects undertaken by the developer, including but not limited to:
    - i. Financial arrangements and Institutions,
    - ii. Fuel contracts,
    - iii. Scheduling/project control information,
    - iv. Regulatory treatment,
    - v. Ownership structure, i.e. partnership, limited partnership, contract buy-outs, etc., and
    - vi. Total operating experience and performance.
  - c. Project Financing: Has project financing been secured? Will ownership equity in project be 15% or greater? Will the project be structured as a non-recourse financing project? Please provide detail.
  - d. Working Capital: Has long-term working capital been secured? Are sufficient reserves available to fund 6 months of debt service? Are sufficient funds available to cover 6 months of O&M expenses? Does project have warranties for key operating equipment during the first year of operations? Please provide detail.
5. **Additional Information:** Please provide the following additional general information to assist the Company in evaluating your Standard Offer Contract
- a. Standard Offer Committed Capacity (MW):
  - b. Size and type of generation:
  - c. Any existing or planned capacity commitments or energy sales to other utilities, if so provide detail:

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- d. Will the project directly interconnect into the Company's transmission grid? Please explain:
- e. If the project is located external to the Company's retail service area, how will the power be delivered to the Company? Please explain:
- f. Will steam host use a portion of electric generation, if so provide detail:
- g. Please provide developer's ownership structure for this project:
- h. Developer's insurance carrier:
  - o Property damage insurance:
  - o Business interruption insurance:
  - o Rating of insurance carrier:
- i. Please provide estimates of the following:
  - o Expected annual metered electric output,
  - o Expected annual metered useful thermal output, in Btu/hr X operating hours/year,
  - o Expected annual metered fuel input, in Btu/hr X operating hours/year
- j. Other:

**EVALUATION CRITERIA AND SCORING:** The Company will accept a Standard Offer Contract on the basis of the information provided in response to the evaluation criteria and upon its judgment of other relevant factors. A Standard Offer Contract which has convincingly demonstrated that the project is financially and technically viable and that the committed capacity would be available by the date specified in the Standard Offer Contract will be accepted for further negotiations leading to a contract offer.

ISSUED BY: C. R. Black, President

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ORIGINAL SHEET NO. 8.284

**STANDARD OFFER CONTRACT RATE FOR  
PURCHASE OF CONTRACTED CAPACITY AND ASSOCIATED ENERGY**

**SCHEDULE:** COG-2, firm capacity and energy

**AVAILABLE:** Tampa Electric Company, herein after referred to as the "Company," will purchase firm capacity and energy offered by renewable generating facilities or qualifying facilities with a design capacity of 100 kW or less ("small qualifying facility") to which a Standard Offer Contract is available under Chapter 366.91 Florida Statutes (F.S) and Florida Public Service Commission (FPSC) Rules 25-17.080 through 25-17.300, Florida Administrative Code (F.A.C.). Unless specifically referred to, a renewable generation facility or a small qualifying facility may be referred to as the "Capacity and Energy Provider" or "CEP". The Company has designated the generating units identified in Appendices C through F, as its Designated Avoided Units. Pursuant to FPSC Rule 25-17.250(2), the Company will accept firm capacity and energy offered by any CEP under the provisions of this schedule for a specific Designated Avoided Unit until:

1. A request for proposals (RFP) pursuant to Rule 25-22.082, F.A.C., is issued for the specific planned generating unit; or
2. The utility files a petition for a need determination or commences construction for the specific generating unit not subject to Rule 25-22.082, F.A.C., or
3. The generating unit upon which the standard offer contract was based is no longer part of the utility's generation plan, as evidenced by FPSC approval of a petition to that effect filed with the FPSC or by its removal from the utility's most recent Ten Year Site Plan.

The Company will negotiate and may contract with any CEP as defined to in Chapter 366.91 F. S. and FPSC Rule 25-17.080, F.A.C., irrespective of its location, which is either directly or indirectly interconnected with the Company, for the purchase of firm capacity and energy pursuant to terms and conditions which deviate from this schedule where such negotiated contracts are in the best interest of the Company's ratepayers and subject to FPSC approval of such a contract.

**APPLICABLE:** To any CEP to which Standard Offer Contracts are available under Chapter 366.91 F. S. and FPSC Rule 25-17.0832(4)(a), F.A.C., irrespective of its location, producing capacity and energy for sale to the Company on a firm basis pursuant to the terms and conditions of this schedule and the Company's Standard Offer Contract or a separately negotiated contract.

**ISSUED BY:** C. R. Black, President

**DATE EFFECTIVE:** May 22, 2007



ORIGINAL SHEET NO. 8.286

Firm capacity and energy are described in FPSC Rule 25-17.0832, F.A.C., and are capacity and energy produced and sold by the CEP pursuant to a negotiated or Standard Offer Contract and subject to certain contractual provisions as to quantity, time and reliability of delivery. Criteria for achieving CEP status shall be those set out in Chapter 366.91 F.S. and FPSC Rules 25-17.080, 25-17.082(4)(a), and 25-17.091, F.A.C., as applicable.

**CHARACTER OF SERVICE:** Purchases within the territory served by the Company shall be, at the option of the Company, single or 3-phase, 60 Hertz, alternating current at any available standard Company voltage. Purchases from outside the territory served by the Company shall be three-phase, 60 Hertz, alternating current at the voltage level available at the interchange point between the Company and the entity delivering firm capacity and energy from the CEP.

**LIMITATIONS:** Purchases under this schedule are subject to the Company's "General Standards for Safety and Interconnection of Cogeneration and Small Power Production Facilities to the Electric Utility System (if applicable)," Federal Energy Regulatory Commission (FERC) Electric Open Access Transmission Tariff (OATT) and associated transmission interconnection tariffs (if applicable), North American Electric Reliability Council (NERC) and Florida Reliability Coordinating Council (FRCC) Reliability Standards, that are applicable to generation and transmission facilities which are connected to, or being planned to be connected to the Company's transmission system (document provided upon request) and to FPSC Rules 25-17.080 through 25-17.091, F.A.C. and are limited to those CEPs which are defined by FPSC Rule 25-17.082(4)(a), F.A.C. and which:

1. execute a Company Standard Offer Contract for the Company's purchase of firm capacity and energy; and
2. commit to commence deliveries of firm capacity and energy no later than the in-service date of the Designated Avoided Unit, and to continue such deliveries through the later of the last day of the tenth year following the in-service date of the avoided unit or the date selected by the CEP that is no later than the day after the last day of the life of the avoided unit.

**RATES FOR PURCHASES BY THE COMPANY:** firm capacity and energy are purchased at unit costs, in dollars per kilowatt per month (\$/kW/month) and cents per kilowatt-hour (¢/kWh), respectively, based on the value of deferring additional Company generating capacity.

ISSUED BY: C. R. Black, President

DATE EFFECTIVE: May 22, 2007



ORIGINAL SHEET NO. 8.288

Firm capacity and energy are described in FPSC Rule 25-17.0832, F.A.C., and are capacity and energy produced and sold by the CEP pursuant to a negotiated or Standard Offer Contract and subject to certain contractual provisions as to quantity, time and reliability of delivery. Criteria for achieving small qualifying facility or renewable facility status shall be those set out in Chapter 366.91 F.S. and FPSC Rules 25-17.080, 25-17.082(4)(a), and 25-17.091, F.A.C., as applicable.

1. **Firm Capacity Rates:** Five options (i.e. Options 1, 2, 3, 4, and 5, as set forth below) are available for payment of firm capacity which is produced by the CEP and delivered to the Company. Once selected, the selected option shall remain in effect for the term of the contract with the Company. Exemplary payment schedules for Options 1 through 4, shown for each Designated Avoided Unit are identified in Appendices C through F, contain the monthly rate per kilowatt (kW) of firm capacity the CEP could contractually commit to deliver to the Company. These examples are based on a contract term which extends at least ten years beyond the in-service date of the Designated Avoided Unit. Payment schedules for longer contract terms will be made available to the CEP upon request and may be calculated based on the methodologies described in Appendix A. A payment schedule for Option 5, if selected by the CEP, will be calculated based on Appendix A and the Option 5 description contained in Section 6.b.iii.(5) of the Standard Offer Contract and will be made available by the Company within 30 days of a request by the CEP. At a maximum, firm capacity and energy shall be delivered for a period of time equal to the anticipated plant life of the Designated Avoided Unit, commencing with the in-service date of the Designated Avoided Unit.

**Option 1 - Value of Deferral Capacity Payments:**

Value of Deferral Capacity Payments shall commence the in-service date of the Designated Avoided Unit, provided the CEP is delivering firm capacity and energy to the Company in accordance with the Minimum Performance Standards (MPS) as described for each Designated Avoided Unit contained in Appendices C through F. Capacity payments under this option shall consist of monthly payments, escalating annually, of the avoided capital and fixed operating and maintenance expense associated with the Designated Avoided Unit and shall be equal to the value of the year-by-year deferral of the Designated Avoided Unit, calculated in conformance with FPSC Rule 25-17.0832, F.A.C., as described in Appendix A.

**Option 2 - Early Capacity Payments:**

Payment schedules under this option are based on an equivalent net present value of the Value of Deferral Capacity Payments for the Designated Avoided Unit. The earliest date that Early Capacity Payments can be received by the CEP shall be the Commercial In-service Date of the CEP's generating facility. The CEP shall select the

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DATE EFFECTIVE: May 22, 2007



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month and year in which the delivery of firm capacity and energy to the Company is to commence and capacity payments are to start. Early Capacity Payments shall consist of monthly payments, escalating annually, of the avoided capital and fixed operating and maintenance expense associated with the Designated Avoided Unit. Avoided Capacity Payments shall be calculated in conformance with FPSC Rules 25-17.0832 and 25-17.250(4), F.A.C., as described in Appendix A. At the option of the CEP, Early Capacity Payments may commence at any time after the specified earliest capacity payment date and before the in-service date of the Designated Avoided Unit provided the CEP is delivering firm capacity and energy to the Company in accordance with MPS as described for each Designated Avoided Unit contained in Appendices C through F. Where Early Capacity Payments are elected, the cumulative present value of the capacity paid to the CEP over the term of the contract shall not exceed the cumulative present value of the capacity payments which would have been made to the CEP had such payments been made pursuant to Option 1.

**Option 3 - Levelized Capacity Payments:**

Levelized capacity payments shall commence on the in-service date of the Designated Avoided Unit, provided the CEP is delivering firm capacity and energy to the Company in accordance with the MPS as described for each Designated Avoided Unit contained in Appendices C through F. The capital portion of the capacity payment under this option shall consist of equal monthly payments over the term of the contract, calculated in accordance with FPSC Rule 25-17.0832, F.A.C., as described in Appendix A. The fixed operation and maintenance expense portion of the capacity payment shall be equal to the value of the year-by-year deferral of fixed operation and maintenance expenses associated with the Designated Avoided Unit calculated in conformance with Appendix A. Where Levelized Capacity Payments are elected, the cumulative present value of the capacity paid to the CEP over the term of the contract shall not exceed the cumulative present value of the capacity payments which would have been made to the CEP had such payments been made pursuant to Option 1.

**Option 4 - Early Levelized Capacity Payments:**

Early Levelized Capacity Payment schedules under this option are based on an equivalent net present value of the Value of Deferral Capacity Payments for the Designated Avoided Unit. The earliest date that Early Levelized Capacity Payments can be received by the CEP shall be the Commercial In-service Date of the CEP's generating facility. The capital portion of the capacity payment under this Option shall consist of equal monthly payments over the term of the contract, calculated in accordance with FPSC Rule 25-17.0832, F.A.C., as described in Appendix A. The fixed operation and maintenance expense portion of the capacity payments shall be equal to

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the value of the year-by-year deferral of fixed operation and maintenance expenses associated with the Designated Avoided Unit calculated in conformance with Appendix A. At the option of the CEP, Early Levelized Capacity Payments shall commence at any time beginning on or after the Commercial In-service Date of the CEP's generating facility and before the in-service date of the Designated Avoided Unit provided the CEP is delivering firm capacity and energy to the Company in accordance with the MPS as described for each Designated Avoided Unit contained in Appendices C through F. The CEP shall select the month and year in which the delivery of firm capacity and energy to the Company is to commence and capacity payments are to start. Where Early Levelized Capacity Payments are elected, the cumulative present value of the capacity payments paid to the CEP over the term of the contract shall not exceed the cumulative present value of the capacity payments which would have been made to the CEP had such payments been made pursuant to Option 1.

**Option 5 - Other**

In accordance with FPSC Rule 25-17.250(4) F.A.C., the CEP may elect a payment stream for the capital component of the Company's avoided unit, including front-end loaded payments, that best meets the financing requirements of the CEP. Where front-end loaded capacity payments are elected, the cumulative present value of the capacity payments paid to the CEP over the term of the contract shall not exceed the cumulative present value of the capacity payments which would have been made to the CEP had such payments been made pursuant to Option 1. A payment schedule for Option 5 will be developed reflecting the interests of the CEP for front-end loading and will be made available for review by the CEP within 30 days of the date of the request for Option 5, and interests of the CEP have been made known to the Company. Any such Option 5 selection may require additional associated security considerations that will be developed by the Company and presented to the CEP at the same time as the payment schedule. The payment schedule and security considerations will be subject to mutual agreement and approval by the FPSC.

The Company will provide the CEP with a schedule of capacity payment rates based on the month and year in which the delivery of firm capacity and energy are to commence and the term of the contract. The currently approved parameters used to calculate the schedule of payments for each Designated Avoided Unit are found in Appendices D through G of this Schedule.

Regardless of the payment stream elected by the CEP, the cumulative present value of capital cost payments made to the CEP over the term of this Agreement shall not exceed the cumulative present value of the capital cost payments which would have

ISSUED BY: C. R. Black, President

DATE EFFECTIVE: May 22, 2007





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been made to the CEP had such payments been made pursuant to FPSC Rule 25-17.0832(4)(g)1., F.A.C. All fixed operation and maintenance expense shall be calculated in conformance with FPSC Rule 25-17.0832(6), F.A.C.

**2. Standard Energy Payment Rates:**

The calculation of energy payments to the CEP shall be based on the sum, over all hours of the Monthly Period, of the product of each hour's Energy Payment Rate times the energy purchased from the CEP by the Company for that hour. All purchases shall be adjusted for losses reflecting delivery voltage.

- a. **As-available Energy Payment Rate:** "As-Available Energy" is energy generated by the CEP's facility for purchase by the Company during time periods when the Designated Avoided Unit would not have been operated had it been installed by the Company. The payment rate in ¢/kWh for As-Available Energy is based on the Company's actual hourly avoided energy costs which are calculated by the Company in accordance with FPSC Rule 25-17.0825, F.A.C. Avoided energy costs include incremental fuel and identifiable variable operation and maintenance expenses.

The methodology to be used in the calculation of the avoided energy costs is described in Appendix B.

The As-available Energy Payment rate will apply to energy delivered by the CEP in the period prior to the in-service date of the Designated Avoided Unit and the periods after the in-service date of the Designated Avoided Unit to the extent that the Designated Avoided Unit would have been dispatched and operated by the Company.

- b. **Unit Energy Payment Rate:** To the extent that the Designated Avoided Unit would have been dispatched and operated by the Company, the Unit Energy Payment Rate in ¢/kWh will apply and shall be based on the cost of fuel used by and variable operating and maintenance expense associated with the Designated Avoided Unit. The calculation used to determine the Unit Energy Payment Rate is shown under part 2 of the section titled "Basis for Monthly Energy Payment Calculation" of the Designated Avoided Unit Appendices, "C" through "F".

ISSUED BY: C. R. Black, President

DATE EFFECTIVE: July 29, 2008



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3. **Fixed Energy Payment Options:**
- a. **Fixed As-Available Energy Payments:** In accordance with FPSC Rule 25-17.250(6)(a) F.A.C., the CEP may elect Fixed As-Available Energy Payments for the period prior to the in-service date of the avoided unit. The Fixed As-Available Energy Payments shall be based on the Company's year-by-year projection of system incremental fuel costs prior to hourly economy energy sales to other utilities, based on normal weather and fuel market conditions plus a fuel market volatility risk premium mutually agreed upon by the Company and the CEP and approved by the FPSC.
  - b. **Fixed Base Energy Payments:** At the election of the CEP, a portion of the base energy costs associated with the avoided unit, mutually agreed upon by the Company and the CEP, may be fixed and amortized on a present value basis over the term of the contract starting as early as the in-service date of the CEP's generating facility pursuant to FPSC Rule 25-17.250(6)(b) F.A.C. "Base energy costs associated with the avoided unit" means the energy costs of the avoided unit to the extent the unit would have been operated. The Company shall develop a schedule of such Fixed Base Energy Payments for the consideration of the CEP based on the expressed interests of the CEP. Should the CEP select Fixed Base Energy Payments, the Company may require additional associated security considerations which will also be mutually agreed upon by the Company and the CEP and approved by the FPSC.

**PERFORMANCE CRITERIA:** In addition to the following provisions, payments for firm capacity are conditioned on the CEP's ability to meet or exceed the Minimum Performance Standards (MPS) for each of the Company's Designated Avoided Unit as described for each in Appendices C through F:

- 1. **CEP's Commercial In-Service Date:** Capacity Payments shall not commence until the CEP has attained and demonstrated commercial in-service status. The Commercial In-Service Date of the CEP shall be defined as the first day of the month following the successful completion by the CEP of maintaining an hourly kW output for a 24 hour period, as metered at the point of interconnection with the Company, equal to or greater than the CEP's "Contracted Capacity" as designated in the Standard Offer Contract. A CEP shall coordinate the operation of its facility during this test period with the Company to insure that the performance of its facility during this 24 hour period is reflective of the anticipated day to day operation of the CEP.

ISSUED BY: C. R. Black, President

DATE EFFECTIVE: July 29, 2008



ORIGINAL SHEET NO. 8.302

2. **Monthly Availability and Monthly Capacity Factor:** Upon achieving commercial in-service status, payments for firm capacity shall be made monthly in accordance with the capacity payment rate option selected by the CEP and subject to the provision that the CEP equals or exceeds the MPS for Monthly Availability and Monthly Capacity Factor of the Company's Designated Avoided Unit, as defined in Appendices C through F of this schedule, on which the Standard Offer Contract is based.
3. **CEP's Obligation if CEP Receives Capacity Payments Under Capacity Payments Options 2, 3, 4, or 5:** The CEP's payment option choice pursuant to Paragraph 6.b.iii of the Company's Standard Offer Contract may result in payments made by the Company for capacity delivered prior to the in-service date of the avoided unit. Similarly, Levelized and Early-Levelized, and front-end loaded Other Capacity Payments for capacity delivered on or after the in-service date of the avoided unit, may also exceed the year-by-year value of deferring the Designated Avoided Unit as specified in this Agreement. The Parties recognize that capacity payments that exceed the year-by-year value of deferring the avoided unit may have to be repaid by the CEP in the event the CEP fails to perform pursuant to the terms and conditions of the Company's Standard Offer Contract.

To ensure that the CEP will satisfy its obligation to make any repayment to the Company, the following provisions will apply:

The Company shall establish a Repayment Account to accrue the sum of the capacity payments that may have to be repaid by the CEP to the Company. Amounts shall be added to the Repayment Account each month through the month prior to the in-service month of the avoided unit, in the amount of the Company's Early Capacity Payments made to the CEP pursuant to the CEP's chosen payment option.

Beginning on the in-service date of the avoided unit, the difference between the capacity payment made to the CEP and the "normal" capacity payment calculated pursuant to Option 1 will also be added each month to the Repayment Account, so long as the payment to the CEP is greater than the monthly payment the CEP would have received if it had selected Option 1 in Paragraph 6.b.iii, of the Company's Standard Offer Contract.

Also beginning on the in-service date of the avoided unit, at such time that the Monthly Capacity Payment made to the EP, pursuant to the Capacity Payment Option selected, is less than the "normal" Monthly Capacity Payment in Option 1, there shall be debited from the Repayment Account an Early Payment Offset Amount to reduce the balance in

ISSUED BY: C. R. Black, President

DATE EFFECTIVE: May 22, 2007



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the Repayment Account. Such Early Payment Offset Amount shall be equal to the amount which the Company would have paid for capacity in that month if capacity payments had been calculated pursuant to Option 1 and the CEP had elected to begin receiving capacity payments on the in-service date of the avoided unit minus the Monthly Capacity Payment the Company makes to the CEP (assuming the MPS are met or exceeded), pursuant to the Capacity Payment Option chosen by the CEP.

Monthly Capacity Payments will not be made to the CEP for any month the CEP fails to meet the MPS and if applicable, a payment will be required by the CEP to the Company in an amount equal to the Early Payment Offset for that month. In the event a payment is required from the CEP to the Company, the CEP's Repayment Account will be reduced by the amount of such payment provided that any such payment will not exceed the current balance in the Repayment Account.

The CEP shall owe the Company and be liable for the current balance in the Repayment Account. The annual balance in the Repayment Account shall accrue interest at an annual rate of 7.88%. The Company agrees to notify the CEP monthly as to the current Repayment Account balance.

In the event of default by the EP, the total Repayment Account balance shall become due and payable within 20 business days of receipt of written notice, as reimbursement for the Capacity Payments made to the CEP by the Company in excess of "normal capacity payments."

The CEP's obligation to reimburse the Company in the amount of the balance in the Repayment Account shall survive the termination of the CEP's Standard Offer Contract with the Company. Such reimbursement shall not be construed to constitute liquidated damages and shall in no way limit the right of the Company to pursue all its remedies at law or in equity against the CEP.

Prior to receipt of Early, Levelized, Early-Levelized, or front-end loaded Other Capacity Payments the CEP shall secure its obligation to repay any balance in the Repayment Account in the event the CEP defaults under the terms of its Standard Offer Contract with the Company.

ISSUED BY: C. R. Black, President

DATE EFFECTIVE: May 22, 2007



**NINTH REVISED SHEET NO. 8.306**  
**CANCELS EIGHTH REVISED SHEET NO. 8.306**

Continued from Sheet No. 8.304

Such security shall be in the form of cash deposited in an interest bearing escrow account mutually acceptable to the Company and the EP; an unconditional and irrevocable direct pay letter of credit in form and substance satisfactory to the Company; or a performance bond in form and substance satisfactory to the Company. The form of security required will be in the sole discretion of the Company and will be in such form as to allow the Company immediate access to the funds in the event of default by the CEP.

Florida Statute 377.709(4) requires a local government to refund Early Capacity Payments should a Municipal Solid Waste Facility owned, operated by or on the behalf of the local government be abandoned, closed down or rendered illegal. Therefore a utility may not require risk-related guarantees from a Municipal Solid Waste Facility as required in FPSC Rule 25-17.0832 (2)(c) and (3)(e)(8), F. A. C. However, at its option, a Municipal Solid Waste Facility may provide such risk-related guarantees.

**4. Additional Criteria:**

- a. The CEP shall provide monthly generation estimates by December 1 for the next calendar year; and
- b. The CEP shall promptly update its yearly generation schedule when any changes are determined necessary; and
- c. The CEP shall agree to reduce generation or take other appropriate action as requested by the Company for safety reasons or to preserve system integrity; and
- d. The CEP shall coordinate scheduled outages with the Company;
- e. The CEP shall comply with the reasonable requests of the Company regarding daily or hourly communications.

**DELIVERY VOLTAGE ADJUSTMENT:** Energy Payments to CEPs within the Company's service territory shall be adjusted according to the delivery voltage by the following multipliers:

Rate Schedule	Adjustment Factor
RS, GS	1.0525
GSD, SBF	1.0488
IS, SBI	1.0178

Continued to Sheet No. 8.308

**ISSUED BY:** N. G. Tower, President

**DATE EFFECTIVE:** January 1, 2018





ORIGINAL SHEET NO. 8.308

**METERING REQUIREMENTS:** CEPs within the territory served by the Company shall be required to purchase from the Company the necessary hourly recording meters to measure their energy production. Unless special circumstances warrant, meters shall be read at monthly intervals on the approximate corresponding day of each meter reading period. Energy purchases from CEPs outside the territory served by the Company shall be measured as the quantities scheduled for interchange to the Company by the entity delivering firm capacity and energy to the Company.

**BILLING OPTIONS:** The CEP, upon entering into a contract for the sale of Contracted Capacity and Associated Energy or prior to delivery of As-Available Energy to the Company, shall elect to make either simultaneous purchases from the interconnecting utility and sales to the Company or net sales to the Company. The billing option elected may only be changed:

1. when the CEP selling As-Available Energy enters into a negotiated contract or Standard Offer Contract for the sale of firm capacity and energy; or
2. when a firm capacity and energy contract expires or is lawfully terminated by either the EP, or the Company; or
3. when the CEP is selling As-Available Energy and has not changed billing methods within the last 12 months; and
4. when the election to change billing methods will not contravene the provisions of FPSC Rule 25-17.0832, F.A.C., or any contract between the CEP and the Company.

If the CEP elects to change billing methods in accordance with FPSC Rule 25-17.082, F.A.C., such a change shall be subject to the following provisions

1. upon at least 30 days advance written notice to the Company; and
2. upon the installation by the Company of any additional metering equipment reasonably required to effect the change in billing methodology and upon payment by the CEP for such metering equipment and its installation; and
3. upon completion and approval by the Company of any alterations to the interconnection reasonably required to effect the change in billing methodology and upon payment by the CEP for such alterations

Should the CEP elect the Simultaneous Purchases and Sales billing option, purchases of electric service by the CEP from the interconnecting utility shall be billed at the retail rate schedule under which the CEP load would receive service as a customer of the utility; sales of electricity delivered by the CEP to the purchasing utility shall be purchased at the utilities avoided capacity and energy rates, where applicable, in accordance with FPSC Rules 25-17.0825 and 25-17.0832, F.A.C.

ISSUED BY: C. R. Black, President

DATE EFFECTIVE: May 22, 2007



SECOND REVISED SHEET NO. 8.312  
CANCELS FIRST REVISED SHEET NO. 8.312

Continued from Sheet No. 8.308

Should the CEP elect a Net Billing Arrangement, the hourly net capacity and energy sales delivered to the purchasing utility shall be purchased at the utility's avoided capacity and energy rates, where applicable, in accordance with FPSC Rules 25-17.0825 and 25-17.0832, F.A.C. Purchases from the interconnecting utility shall be billed at the retail rate schedule, under which the CEP load would receive service as a customer of the utility.

Although a billing option may be changed in accordance with FPSC Rule 25-17.082, F.A.C., the Contracted Capacity may only change through mutual negotiations satisfactory to the CEP and the Company.

Basic Service charges that are directly attributable to the purchase of firm capacity and energy from the CEP are deducted from the CEP's total monthly payment. A statement covering the charges and payments due the CEP is rendered monthly and payment normally is made by the 20<sup>th</sup> business day following the end of the Monthly Period.

**CHARGES/CREDITS TO THE CEP:**

1. **Basic Service Charges:** A monthly Basic Service Charge will be rendered for maintaining an account for the CEP engaged in either an As-Available Energy or firm capacity and energy transaction and for other applicable administrative costs. Actual charges will depend on how the CEP is interconnected to the Company.

CEPs not directly interconnected to the Company, will be billed \$990 monthly as a Basic Service Charge.

Monthly Basic Service charges, applicable to CEPs directly interconnected to the Company, by Rate Schedule are:

RATE SCHEDULE	BASIC SERVICE CHARGE (\$)	RATE SCHEDULE	BASIC SERVICE CHARGE (\$)
RS	15.00	GST	20.00
GS	18.00	GSDT (secondary)	30.00
GSD (secondary)	30.00	GSDT (primary)	130.00
GSD (primary)	130.00	GSDT (subtrans.)	990.00
GSD (subtrans.)	990.00	SBFT (secondary)	55.00
SBF (secondary)	55.00	SBFT (primary)	155.00
SBF (primary)	155.00	SBFT (subtrans.)	1,015.00
SBF (subtrans.)	1,015.00	IST (primary)	622.00
IS (primary)	622.00	IST (subtrans.)	2,372.00
IS (subtrans.)	2,372.00		
SBI (primary)	647.00		
SBI (subtrans.)	2,397.00		

Continued to Sheet No. 8.314

ISSUED BY: G. L. Gillette, President

DATE EFFECTIVE: November 1, 2013



FIRST REVISED SHEET NO. 8.314  
CANCELS ORIGINAL SHEET NO. 8.314

If CEP takes service under Rate Rider GSLM-2 or GSLM-3, an additional Basic Service Charge of \$200.00 will apply.

When appropriate, the Basic Service Charge will be deducted from the CEP's monthly payment. A statement of the charges or payments due the CEP will be rendered monthly. Payment normally will be made by the 20<sup>th</sup> business day following the end of the billing period.

2. **Interconnection Charge for Non-Variable Utility Expenses:** The CEP shall bear the cost required for interconnection including the metering. The CEP shall have the option of payment in full for interconnection or make equal monthly installment payments over a 36 month period together with interest at the rate then prevailing for 30 days highest grade commercial paper; such rate to be determined by the Company 30 days prior to the date of each payment.
3. **Interconnection Charge for Variable Utility Expenses:** The CEP shall be billed monthly for the cost of variable utility expenses associated with the operation and maintenance of the interconnection. These costs include a) the Company's inspections of the interconnection and b) maintenance of any equipment beyond that which would be required to provide normal electric service to the CEP with respect to other Customers with similar load characteristics.
4. **Taxes and Assessments:** The CEP shall be billed monthly an amount equal to the taxes, assessments, or other impositions, if any, for which the Company is liable as a result of its purchases of firm capacity and energy produced by the CEP.

If the Company obtains any tax savings as a result of its purchases of firm capacity and energy produced by the CEP, which tax savings would not have otherwise been obtained, those tax savings shall be credited to the CEP.

5. **Emission Allowance Clause:** Subject to approval by the FPSC, the CEP shall receive a monthly credit, to the extent the Company can identify the same, equal to the value, if any, of any reduction in the number of air emission allowances used by the Company as a result of its purchase of firm capacity and energy produced by the EP; provided that no such credit shall be given if the cost of compliance associated with air emission standards is included in the determination of full avoided cost.

**TERMS OF SERVICE:**

1. It shall be the CEP's responsibility to inform the Company of any change in its electric generation capability.

ISSUED BY: G. L. Gillette, President

DATE EFFECTIVE: November 1, 2013



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2. Any electric service delivered by the Company to the CEP shall be metered separately and billed under the applicable retail rate schedule and the terms and conditions of the applicable rate schedule shall pertain.
3. A billing security deposit will be required in accordance with FPSC Rules 25-17.082(5) and 25-6.097, F.A.C., and the following:
  - a. In the first year of operation, the security deposit should be based upon the singular month in which the CEP's projected purchases from the utility exceed, by the greatest amount, the utility's estimated purchases from the CEP. The security deposit should be equal to twice the amount of the difference estimated for that month. The deposit should be required upon interconnection.
  - b. For each year thereafter, a review of the actual sales and purchases between the CEP and the utility shall be conducted to determine the actual month of maximum difference. The security deposit shall be adjusted to equal twice the greatest amount by which the actual monthly purchases by the CEP exceed the actual sales to the utility in that month.
4. The Company will, under the provisions of this Schedule, require an agreement with the CEP upon the Company's filed Standard Offer Contract.
5. Service under this rate schedule is subject to the rules and regulations of the Company and the FPSC.

**SPECIAL PROVISIONS:**

1. Negotiated contracts deviating from the above standard rate schedule are allowable provided they are agreed to by the Company and approved by the FPSC
2. In accordance with the provision in FPSC Rule 25-17.0883, F.A.C., the Company is required to provide transmission and distribution service to enable a retail customer, at that customer's request, to transmit electrical power generated at one location to the customer's facilities at another location when provision of such service and its associated charges, terms, and other conditions are not reasonably projected to result in higher cost of electric service to the Company's general body of retail and wholesale Customers or adversely affect the adequacy or reliability of electric service to all Customers.

ISSUED BY: C. R. Black, President

DATE EFFECTIVE: May 22, 2007



ORIGINAL SHEET NO. 8.318

A determination of whether or not such service is likely to result in higher cost electric service will be made by the Company by evaluating the results of an appropriately adjusted FPSC approved cost effectiveness methodology, in addition to other modeling analyses.

3. In accordance with FPSC Rule 25-17.089, F.A.C., upon request by a CEP, the Company shall provide transmission service in accordance with its OATT to wheel As-Available Energy or firm capacity and energy produced by the CEP from the CEP to another electric utility.
4. The rates, terms, and conditions for any transmission and ancillary services provide to the CEP shall be those approved by the FERC and contained in the Company's OATT.
5. A CEP may apply for transmission and ancillary services from the Company in accordance with the Company's OATT. Requests for service must be submitted on the Company's Open Access Same-Time Information System ("OASIS"). The Company's contact person, phone number and address is posted and updated on the OASIS and can be viewed by the public on the Internet at the address: [http://www.enx.com/FOA\\_Contacts.html](http://www.enx.com/FOA_Contacts.html). A copy of the Company's OATT is also posted at the address: [http://www.enx.com/FOA/teco\\_home.html](http://www.enx.com/FOA/teco_home.html).
6. If the CEP is located outside of the Company's transmission area, then the CEP must arrange for long term firm 3<sup>rd</sup>-party transmission, ancillary services and an Interconnection Agreement on all necessary external transmission paths for the term of the contract.

**PROCEDURE FOR PROCESSING STANDARD OFFER CONTRACTS:** Within 60 days of the receipt of a signed, completed Standard Offer Contract, the Company shall either accept and sign the Standard Offer Contract and return it within 5 days to the CEP or petition the Commission not to accept the Standard Offer Contract and provide justification for the refusal.

All Standard Offer Contracts received will be given equal consideration and each will be reviewed in accordance with the Company's Evaluation Procedure for Standard Offer Contracts. The criteria and procedure used to evaluate Standard Offer Contracts are attached to the Standard Offer Contract as Appendix I.

ISSUED BY: C. R. Black, President

DATE EFFECTIVE: May 22, 2007





ORIGINAL SHEET NO. 8.322

Each delivered Standard Offer Contract should be clearly labeled "Standard Offer Contract" and shall only be received at the Company's main business address:

Tampa Electric Company  
c/o Manager - Wholesale Contracts,  
Wholesale Marketing and Sales  
702 North Franklin Street (33602)  
P. O. Box 111  
Tampa, Florida 33601

Certified mail will be the preferred means of Standard Offer Contract delivery.

Each eligible Standard Offer Contract will be evaluated as to its technical reliability, viability and financial stability, as well as other relevant information, in accordance with FPSC Rule 25-17.0832, F.A.C.

The Company will select and accept Standard Offer Contracts, after the evaluation process, which have convincingly demonstrated that their project is financially and technically viable and that the Contracted Capacity and Associated Energy would be available by the date specified in the Standard Offer Contract.

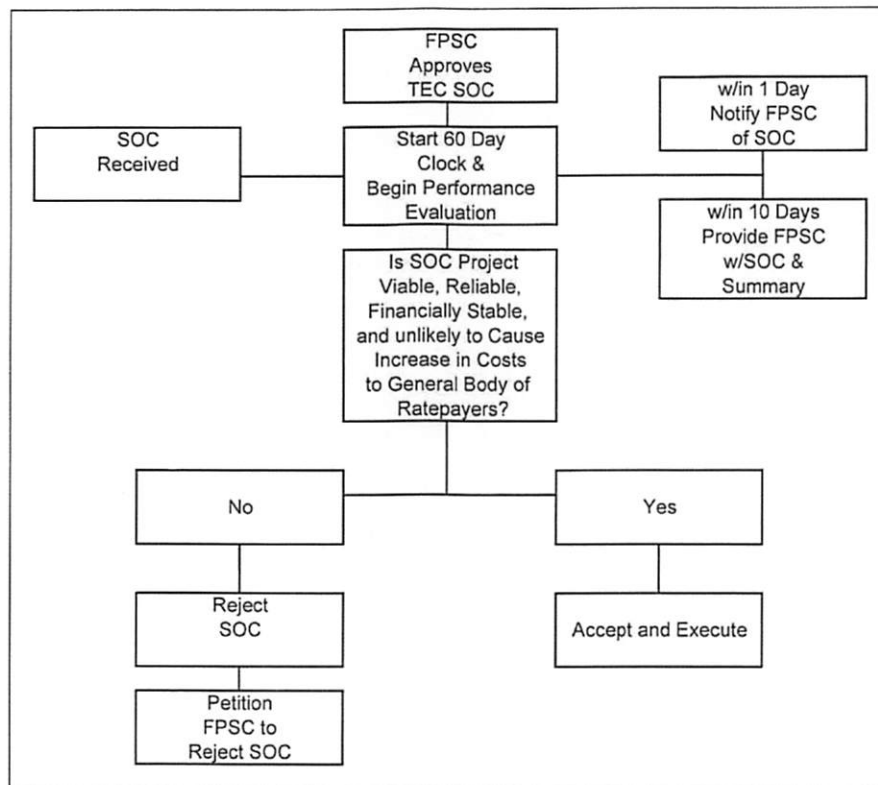
ISSUED BY: C. R. Black, President

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ORIGINAL SHEET NO. 8.324

PROCEDURE FOR PROCESSING STANDARD OFFER CONTRACTS



ISSUED BY: C. R. Black, President

DATE EFFECTIVE: May 22, 2007



~~EIGHTH-NINTH~~ REVISED SHEET  
NO. 8.326  
CANCELS ~~SEVENTH-EIGHTH~~  
REVISED SHEET NO. 8.326

RATE SCHEDULE COG-2  
TABLE OF APPENDICES

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B	METHODOLOGY TO BE USED IN THE CALCULATION OF AVOIDED ENERGY COST	8.344
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F	RESERVED FOR FUTURE USE	-

ISSUED BY: ~~G. L. Gillette~~ N. G. Tower,  
President

DATE EFFECTIVE: July 13, 2017



ORIGINAL SHEET NO. 8.328

**RATE SCHEDULE COG-2  
APPENDIX A  
VALUE OF DEFERRAL METHODOLOGY**

Appendix A provides a detailed description of the methodology used by the Company to calculate the monthly value of deferring the Designated Avoided Unit referred to in Rate Schedule COG-2. When used in conjunction with the current FPSC-approved cost parameters associated with each Designated Avoided Unit contained in Appendices C through E, the CEP may determine the applicable value of deferral capacity payment rate associated with the timing and operation of its particular facility should the CEP enter into a Standard Offer Contract with the Company.

Also contained in Appendix A is a discussion of the types and forms of surety bond requirements or equivalent assurance of repayment of early, Levelized, Early Levelized, or front-end loaded Other Capacity Payments acceptable to the Company in the event of contractual default by the CEP.

**CALCULATION OF VALUE OF DEFERRAL:** FPSC Rule 25-17.0832(6), F.A.C., specifies that avoided capacity costs, in dollars per kilowatt per month, associated with firm capacity sold to a utility by the CEP pursuant to the utility's Standard Offer shall be defined as the value of a year-by-year deferral of the Designated Avoided Unit and shall be calculated as follows:

$$VAC_m = 1/12 [K I_n (1-R_p) / (1-R_p)^L + O_n]$$

FPSC Rule 25-17.0832(6)(a), F.A.C., specifies that, beginning with the in-service date of the Company's Designated Avoided Unit, for a one year deferral:

$VAC_m$  = Company's monthly value of avoided capacity, \$/kW/month, for each month of year n;

$K$  = present value of carrying charges for one dollar of investment over L years with carrying charges computed using average annual rate base and assumed to be paid at the middle of each year and present value to the middle of the first year;

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ORIGINAL SHEET NO. 8.332

- $I_n$  = total direct and indirect cost, in mid-year \$/kW including AFUDC but excluding CWIP, of the Designated Avoided Unit(s) with an in-service date of year  $n$ , including all identifiable and quantifiable costs relating to the construction of the Designated Avoided Unit that would have been paid had the Designated Avoided Unit(s) been constructed;
- $O_n$  = total fixed operation and maintenance expense for the year  $n$ , in mid-year \$/kW/year, of the Designated Avoided Unit(s);
- $i_p$  = annual escalation rate associated with the plant cost of the Designated Avoided Unit(s);
- $i_o$  = annual escalation rate associated with the operation and maintenance expense of the Designated Avoided Unit(s);
- $r$  = annual discount rate, defined as the Company's incremental after tax cost of capital;
- $L$  = expected life of the Designated Avoided Unit(s); and
- $R_p = (1 + i_p) / (1 + r)$
- $n$  = year for which the Designated Avoided Unit is deferred starting with its original anticipated in-service date and ending with the termination of the contract for the purchase of firm capacity and energy.

**CALCULATION OF EARLY CAPACITY PAYMENTS:** FPSC Rule 25-17.0832(6)(b), F.A.C., specifies that, normally, payment for firm capacity shall not commence until the in-service date of the Designated Avoided Unit(s). At the option of the CEP, however, the Company may begin making Early Capacity Payments consisting of the fixed operation and maintenance expense and the capital cost component of the value of a year-by-year deferral of the Designated Avoided Unit(s). When such Early Capacity Payments are elected, capacity payments shall be paid monthly commencing no earlier than the Commercial In-Service date of the CEP, and shall be calculated as follows:

$$A_m = [A_c(1 + i_p)^{(m-1)} + A_o(1 + i_o)^{(m-1)}] / 12 \quad \text{for } m = 1 \text{ to } t$$

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ORIGINAL SHEET NO. 8.334

Beginning with the earliest avoidance date of the Company's Designated Avoided Unit(s), for a one year deferral:

$A_m$  = monthly early capacity payments to be made to the CEP for each month of the contract year  $n$ , in \$/kW/month, starting no earlier than the in-service date of the CEP's generating facility;

$m$  = year for which early capacity payments to the CEP are made;

$t$  = the term, in years, of the contract for the purchase of firm capacity if early capacity payments commence in year  $m$ ;

$$A_c = F [(1 - R_p) / (1 - R_p^t)]$$

Where:

$F$  = the cumulative present value, in the year contractual payments will begin, of the avoided capital cost component of capacity payments which would have been made had capacity payments commenced with the anticipated in-service date of the Designated Avoided Unit(s);

$$A_o = G [(1 - R_o) / (1 - R_o^t)]$$

Where:

$G$  = the cumulative present value in the year that the contractual payments will begin, of the avoided fixed operation and maintenance expense component of capacity payments which would have been made had capacity payments commenced with the anticipated in-service date of the Designated Avoided Unit(s).

$$R_o = (1 + i_o) / (1 + r)$$

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FIRST REVISED SHEET NO. 8.336  
CANCELS ORIGINAL SHEET NO. 8.336

Continued from Sheet No. 8.334

**CALCULATION OF LEVELIZED AND EARLY LEVELIZED CAPACITY PAYMENTS:** FPSC Rule 25-17.0832(6)(c), F.A.C., specifies that, Monthly Levelized and Early Levelized Capacity Payments shall be calculated as follows:

$$P_L = F/12 \{r / [1 - (1 + r)^{-t}]\} + O$$

Where:

- $P_L$  = the monthly levelized capacity payment, starting on or prior to the in-service date of the Designated Avoided Unit(s);
- $O$  = the monthly fixed operation and maintenance component of the capacity payments, calculated in accordance with FPSC Rule 25-17.0832, paragraph 6(a) for Levelized Capacity Payments or with paragraph 6(b) for Early Levelized Capacity Payments, F.A.C.

Currently approved parameters for each Designated Avoided Unit applicable to the formulas above are found in Appendices C through F.

**CALCULATION OF MONTHLY AVAILABILITY AND CAPACITY FACTOR:** Pursuant to FPSC Rule 25-17.0832, F.A.C., and Docket No. 891049-EU, the CEP must meet or exceed, on a monthly basis, the MPS of the Company's Designated Avoided Unit(s) as described in Appendices C through F of COG-2 in order to receive monthly capacity payments. At the end of each Monthly Period, beginning with the Monthly Period specified in Paragraph 6.b.ii of the Company's Standard Offer Contract, the Company will calculate the CEP's Monthly Availability and Monthly Capacity Factor.

**REPAYMENT OF EARLY CAPACITY PAYMENTS:** FPSC Rule 25-17.0832(3)(c), F.A.C., requires that when early, levelized, early levelized, and front-end loaded capacity payments are elected, the CEP must provide a security deposit for assurance of repayment of Early Capacity Payments in the event the CEP is unable to meet the terms and conditions of its contract. Depending on the nature of the CEP's operation, financial health and solvency of the CEP or its guarantor, if any, and its ability to meet the terms and conditions of the Company's Standard Offer Contract; one of the following may constitute an equivalent assurance of repayment:

Continued to Sheet No. 8.338

ISSUED BY: C. R. Black, President

DATE EFFECTIVE: June 30, 2009



ORIGINAL SHEET NO. 8.338

1. cash deposited in an interest bearing escrow account mutually acceptable to the Company and the EP; or
2. an unconditional and irrevocable direct pay letter of credit in form and substance satisfactory to the Company; or
3. a performance bond in form and substance satisfactory to the Company.

The form of security required will be in the sole discretion of the Company and will be in such form as to allow the Company immediate access to the funds in the event that the CEP fails to meet the terms and conditions of its contract

The Company will cooperate with each CEP applying for Capacity Payments under Capacity Payment Options 2, 3, 4, or 5 to determine the exact form of an "equivalent assurance of repayment" to be required based on the particular aspects of the CEP. The Company will endeavor to accommodate an equivalent assurance of repayment which is in the best interests of both the CEP and the Company's ratepayers.

Florida Statute 377.709(4), requires the local government to refund Early Capacity Payments should a Municipal Solid Waste Facility owned, operated by or on behalf of a local government be abandoned, closed down or rendered illegal, therefore a utility may not require risk-related guarantees from a Municipal Solid Waste Facility as required in FPSC Rule 25-17.0832(2)(c) and (3)(e)(8), F.A.C. However, at its option, a Municipal Solid Waste Facility may provide such risk-related guarantees.

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SECOND REVISED SHEET NO. 8.344  
CANCELS FIRST REVISED SHEET NO. 8.344

**RATE SCHEDULE COG-2  
APPENDIX B  
METHODOLOGY TO BE USED IN THE CALCULATION OF AVOIDED ENERGY COST**

The methodology the Company has implemented in order to determine the appropriate avoided energy costs and any payments thereof to be rendered to CEPs is consistent with the provisions of Order No. 23625 in Docket No. 891049-EU, issued on October 16, 1990; the Amendment of FPSC Rules 25-17.080 et seq, F.A.C.

The avoided energy costs methodology used to determine payments to CEPs on an hourly basis is based on the incremental cost of fuel using the average price of replacement fuel purchased in excess of contract minimums. Generally, avoided energy costs are defined to include incremental fuel, identifiable variable operation and maintenance expenses, identifiable variable purchased power costs and an adjustment for line losses reflecting delivery voltage.

Under normal conditions the Company will have additional generation resources available which can carry its native load and firm interchange sales without the CEP's contribution. When this is the case and the CEP is present, the incremental fuel portion of the avoided energy cost is equal to the difference between the Company's production cost at 2 load levels, with and without the CEP's contribution.

In those situations where the Company's maximum available generation (not including its minimum operating reserves) is insufficient to carry its native load and firm interchange sales, in the absence of the CEP contribution, the Company's incremental fuel component of the avoided energy cost will be determined by:

1. system lambda - if "off-system purchases" are not being made and all available generation has been dispatched; or
2. the highest incremental cost of any "off-system purchases" that are being made for native load.

ISSUED BY: G. L. Gillette, President

DATE EFFECTIVE: June 19, 2012



FIRST REVISED SHEET NO. 8.352  
CANCELS ORIGINAL SHEET NO. 8.352

Examples of these situations are found in Exhibits 1- 4.

The As-Available Avoided Energy Cost, as determined by this methodology, is priced at a level not to exceed the Company's incremental fuel and identifiable variable operating and maintenance (O&M) expenses including the cost of any off-system purchases for native load.

**PARAMETERS FOR DETERMINING AS-AVAILABLE AVOIDED ENERGY COSTS:** The Company uses production costing methods for determining avoided energy cost payments to CEPs. Computerized production costing is accomplished on an hourly basis. The parameters used are as follows:

1. The system load is the actual system load at the Hour Ending with the clock hour (HE).
2. The first allocation of load for production costing is to those units that are base loaded at a certain level for operating reasons. The remainder of the load is allocated to units available for economic dispatch through the use of incremental cost curves.
3. The fuel costs associated with each of the Company's units operating at its allocated level of generation is determined by using the individual units input/output equation, its heat rate performance factor and the composite price of supplemental fuel.
4. The Company's own production cost for each hour of operation at a particular generation level equals the sum of the individual units' fuel cost for that hour. The production cost, thus determined, consists of the composite price of replacement fuel based on supplemental purchases and the incremental heat rate for the generating system.
5. The Company's total cost equals its own production cost (paragraph 4 above), identified variable O&M, plus the cost of any off-system purchases to serve native load.
6. Native load includes all firm and non-firm retail load.
7. The cost of off-system firm and non-firm variable purchases is defined as the highest energy cost energy block purchased for native load during the hour.
8. Firm interchange sales are included in production cost calculations.

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SECOND REVISED SHEET NO. 8.356  
CANCELS FIRST REVISED SHEET NO. 8.356

Continued from Sheet No. 8.352

9. The Company's Maximum Available Generation in this methodology is defined as the maximum capacity less operating reserve requirements.
10. The "Standard Tariff Block" is defined to be an x-megawatt (XMW) block equivalent to the combined actual hourly generation delivered to the Company from all CEPs making As-Available Energy sales to the Company. In the absence of metered information on exports from the CEP making As-Available Energy sales to the Company, an estimate of the hourly exports from that Facility will be used, rounded to the nearest 5 MW and then added to the sum of all other known As-Available Energy purchases for that hour.

Continued to Sheet No. 8.376

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DATE EFFECTIVE: June 25, 2013



SECOND REVISED SHEET NO. 8.376  
CANCELS FIRST REVISED SHEET NO. 8.376

Continued from Sheet no. 8.356

**SUPPLEMENTAL FUEL:**

The term "supplemental fuel" refers to the variable cost for additional fuel to be delivered to Tampa Electric's generation facilities. The supplemental fuel price includes the cost of the fuel commodity at market prices plus the variable cost to deliver the commodity to the generation facility. Market prices for coal, oil and natural gas are based on published indexes or current market activity for commodities of comparable quality to those used in Tampa Electric's generation facilities.

**AVOIDED ENERGY COST CALCULATIONS:**

**Example: 1** Off-system purchases are not being made. The Company's generation is capable of carrying its native load and firm sales.

The procedure used to deterministically calculate the incremental avoided energy cost associated with As-Available Energy on an hour by hour basis when no off-system purchases are taking place is as follows:

The 1<sup>st</sup> calculation determines the Company's production cost without the benefit of cogeneration.

Continue to Sheet No. 8.378

ISSUED BY: G. L. Gillette, President

DATE EFFECTIVE: July 13, 2010



FIRST REVISED SHEET NO. 8.378  
CANCELS ORIGINAL SHEET NO. 8.378

In these instances, the \$/MWH price that the Company will pay the CEPs is determined by calculating the production cost at 2 load levels.

The 2<sup>nd</sup> calculation determines the Company's production cost with the benefit of cogeneration.

After each of the 2 calculations are made, the avoided energy cost rate is calculated by dividing the difference in production cost between the 2 calculations described above by the "Standard Tariff Block." [The "Standard Tariff Block" is defined to be an XMW block equivalent to the combined actual hourly generation delivered to the Company from all CEPs making As-Available Energy sales to the Company. In the absence of metered information on exports from the CEP making As-Available Energy sales to the Company, an estimate of the hourly exports from that Facility will be used, rounded to the nearest 5 MWs and then added to the sum of the other as-available purchases for that hour. Prior to the in-service date of the appropriate Designated Avoided Unit, firm energy sales will be equivalent to as-available sales. Beginning with the in-service date of the appropriate Designated Avoided Unit(s), firm energy purchases from CEPs shall be treated as as-available energy for the purposes of determining the XMW block size only during the periods that the appropriate Designated Avoided Unit would not be operated.] The difference in production costs divided by the XMW block determines the As-Available Energy Payment Rate (AEPR) for the hour. The AEPR will be applied to the "Actual" CEP MWs purchased during the hour to determine payment to each CEP supplying As-Available Energy, and each CEP supplying firm energy in those instances where the avoided unit would not have been operated during the hour. See Exhibit 1.

**Example 2** Off-system purchases are not being made. The Company's generation can only carry its native load and firm sales with the CEP contribution.

The procedure used to deterministically calculate the incremental avoided energy cost associated with As-Available Energy on an hour by hour basis whenever the Company is not purchasing off-system interchange is as follows:

In this instance, the avoided energy cost that the Company will pay the CEPs will be determined by calculating the production cost at the last MW load level. The avoided energy cost is the production cost at system lambda. See Exhibit 2.

In the situation where the Company's generation is not fully dispatched, and additional generation capability is available to price a portion of the CEP block, then the CEP block will be priced at a combination of the difference between the Company's production cost at 2 load levels as previously defined and at system lambda. See Exhibit 3.

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**Example 3** Off-system purchases are being made to serve native load.

The procedure used to deterministically calculate the incremental avoided energy cost associated with As-Available Energy on an hour by hour basis whenever the Company is making off-system purchases for native load is as follows:

In this instance, the \$/MWH price that the Company will pay is determined by applying the highest incremental cost of the off-system purchases to the CEP block. See Exhibit 4.

**DELIVERY VOLTAGE ADJUSTMENT:** A credit for avoided line losses reflecting the voltage at which generation by the CEPs is received is included in the Company's procedure for the determination of incremental avoided energy cost associated with As-Available Energy. Tampa Electric uses the adjustment factors shown on Sheet No. 8.306 for calculating the compensation for avoided line losses at the transmission and distribution system voltage levels based on the appropriate classification of service.

**Example:** (Firm Standby Time-of-Day)

Actual Incremental Hourly Avoided Energy Cost is:  
\$14.80/MWH

Adjustment Factor for Line Losses:  
1.0561

The Actual Incremental Hourly Avoided Energy Cost adjusted for avoided line losses associated with As-Available Energy provided to the Company would then become, in this example, \$15.63/MWH.

**"IDENTIFIABLE" INCREMENTAL VARIABLE O&M:** Tampa Electric's methodology for determining incremental avoided energy costs associated with As-Available Energy includes a procedure for calculating "identifiable" incremental variable O&M (VOM) expense.

A VOM rate (\$/MWH) is calculated annually for each Tampa Electric generating group. A generating group comprises units of the same type with similar size and operating characteristics (e.g., Big Bend coal units, Bayside CCs, Polk IGCC, all 180 MW CTs, etc.). The VOM rate for a generating group is calculated by dividing the previous year's identifiable VOM expenses for the group by the previous year's generation in megawatt-hours for the group.

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ORIGINAL SHEET NO. 8.392

The incremental avoided energy cost associated with As-Available Energy is adjusted in each hour by the applicable VOM group rate(s) for the generation being avoided in that hour.

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SECOND REVISED SHEET NO. 8.396  
CANCELS FIRST REVISED SHEET NO. 8.396

EXHIBIT 1

**Example:** Off-system purchases are not being made. The Company's generation is capable of carrying its native load and firm sales.

Given:

Actual CEP Energy = 50 MWs  
The Company's Maximum Available Generation = 1560 MWs  
Native Load = 1550 MWs  
Firm Sales = 10 MWs

First Calculation (WITHOUT CEP):

Production Cost at 1560 MWs = \$20,275/hour

Second Calculation (WITH CEP):

Production Cost at 1510 MWs = \$19,500/hour

Third Calculation (CEP Rate \$/MWH):

Actual Hourly Avoided Energy Cost = (\$20,275/hour - \$19,500/hour) / (50 MW)

or

As-Available Energy Payment Rate (AEPR) = \$15.50/MWH

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DATE EFFECTIVE: June 19, 2012



SECOND REVISED SHEET NO. 8.398  
CANCELS FIRST REVISED SHEET NO. 8.398

EXHIBIT 2

**Example:** Off-system purchases are not being made. The Company's generation can carry its native load and firm sales only with the CEP contribution.

Given:

Actual CEP Energy = 50 MWs  
The Company's Maximum Available Generation = 1460 MWs  
Native Load = 1500 MWs  
Firm Sale = 10 MWs

First Calculation:

Production Cost at 1460 MWs = \$18,900/hour

Second Calculation:

Production Cost at 1459 MWs = \$18,882.50/hour

Third Calculation (CEP Rate \$/MWH):

Actual Hourly Avoided Energy Cost at 1 MW (system lambda<sup>1</sup>) =  
(\$18,900/hour - \$18,882.50/hour) / (1 MW)

or

As-Available Energy Payment Rate (AEPR) = \$17.50/MWH

<sup>1</sup> In this example, system lambda is the production cost for the last MW segment to meet the load after dispatching all available generation capacity.

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SECOND REVISED SHEET NO. 8.402  
CANCELS FIRST REVISED SHEET NO. 8.402

EXHIBIT 3

**Example:** Off-system purchases are not being made to serve native load and firm sales. Available generation capacity is not fully dispatched. Without the CEP's contribution, the Company's native load and firm sales can be carried only with additional power purchases.

**Given:**

Actual CEP Energy = 50 MWs  
The Company's Maximum Available Generation = 1530 MWs  
The Company's Actual Generation = 1500 MWs  
Native Load = 1540 MWs  
Firm Sale = 10 MWs

**Step 1 (Calculations for First 30 MWs)**

First Calculation (Without CEP):

Production Cost at 1530 MWs = \$20,590/hour

Second Calculation (With CEP):

Production Cost at 1500 MWs = \$20,050/hour

Third Calculation:

Actual Hourly Avoided Energy Cost at 30 MWs =  
 $(\$20,590/\text{hour}) - (\$20,050/\text{hour}) = \$540/\text{hour}$

**Step 2 (Calculations for Remaining 20 MWs)**

First Calculation:

Production Cost at 1530 MWs = \$20,590/hour

Second Calculation:

Production Cost at 1529 MWs = \$20,571.50/hour

Third Calculation:

Actual Hourly Avoided Energy Cost at 1 MW (system  $\lambda^1$ ) for 20 MWs =  
 $(\$20,590/\text{hour} - \$20,571.50/\text{hour}) \times (20 \text{ MWs}) = \$370/\text{hour}$

**Step 3 (Calculation of Composite Rate for Total 50 MW Block)**

Composite Actual Hourly Avoided Energy Cost of 50 MW Block =  $(\$540 + \$370) / 50 \text{ MW}$   
or

As-Available Energy Payment Rate (AEPR) = \$18.20/MWH

<sup>1</sup> In this example, system  $\lambda$  is the production cost for the last MW segment to meet the load after dispatching all available generation capacity.

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FIRST REVISED SHEET NO. 8.404  
CANCELS ORIGINAL SHEET NO. 8.404

EXHIBIT 4

**Example:** Off-system purchases are being made. The Company's native load and firm sales can be carried only with additional purchase power.

Given:

Actual CEP Energy = 50 MWs  
The Company's Maximum Available Generation = 1500 MWs  
The Company's Actual Generation = 1500 MWs  
Native Load = 1540 MWs  
Firm Sales = 20 MWs  
Off-System Purchase<sup>1</sup> = 10 MWs Costing \$400/hour

Actual Incremental Hourly Avoided Energy Cost = \$400 / 10 MW

Or

As-Available Energy Payment Rate (AEPR) = \$40/hour

<sup>1</sup> Off-System Purchase shall be the highest cost purchased energy block bought during the hour for native load.

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DATE EFFECTIVE: June 19, 2012





~~EIGHTH-NINTH~~ REVISED SHEET  
NO. 8.406  
CANCELS ~~SEVENTH-EIGHTH~~  
REVISED SHEET NO. 8.406

**RATE SCHEDULE COG-2  
APPENDIX C**

**2021-2023 COMBUSTION TURBINE**

This Designated Avoided Unit is a 220-245 MW (winter rating) natural gas-fired combustion turbine with a May-JANUARY 1, 2021-2023, in-service date.

**MINIMUM PERFORMANCE STANDARDS**

In order to receive a Monthly Capacity Payment, all Contracted Capacity and Associated Energy provided by CEPs shall meet or exceed the following MPS on a monthly basis. The MPS are based on the anticipated peak and off-peak dispatchability, unit availability, and operating factor of the Designated Avoided Unit over the term of this Standard Offer Contract. The CEP's proposed generating facility ("the Facility") as defined in the Standard Offer Contract will be evaluated against the anticipated performance of a combustion turbine, starting with the first Monthly Period following the date selected in Paragraph 6.b.ii of the Company's Standard Offer Contract.

1. **Dispatch Requirements:** The CEP shall provide peaking capacity to the Company on a firm commitment, first-call, on-call, as-needed basis. In order to receive a Contracted Capacity Payment for each calendar month that the Facility is to be dispatched, the CEP must meet or exceed both the minimum Monthly Availability and Monthly Capacity Factor requirements.
2. **Dispatch Procedure:** Commencing on the calendar day prior to the Facility In-Service Date or the Extended Facility In-Service Date, as applicable, and continuing each calendar day thereafter during the Term, by 7:00 A.M. EPT, the CEP shall electronically transmit a schedule ("Available Schedule") of the hour-by-hour amounts of Contracted Capacity expected to be available from the Facility the next day ("Committed Capacity"). Commencing on the calendar day prior to the Facility In-Service Date or the Extended Facility In-Service Date, as applicable, and continuing each calendar day thereafter during the Term, by 3:00 P.M. EPT, the Company shall electronically transmit the hour-by-hour amounts of Contracted Capacity that the Company desires the CEP to dispatch from the Facility the next day based on the Available Schedule supplied at 7:00 A.M. EPT by the CEP ("Dispatch Schedule"). The CEP's Available Schedule and the Company's Dispatch

Continued to Sheet No. 8.408

ISSUED BY: G. L. Gillette N. G. Tower,  
President

DATE EFFECTIVE: July 13, 2017



FIRST REVISED SHEET NO. 8.408  
CANCELS ORIGINAL SHEET NO. 8.408

Schedule for Fridays will include Saturday, Sunday, and Monday schedules. The CEP's Available Schedule and the Company's Dispatch Schedule during holiday periods will be similarly adjusted. The CEP shall control and operate the Facility in accordance with the Company's Dispatch Schedule. From time to time (i.e. during emergency conditions), the Company may be required to adjust the Dispatch Schedule or ignore scheduled levels altogether, however, each Party shall make reasonable efforts to minimize departures from the Dispatch Schedule.

3. **Automatic Generation Control:** At the Company's discretion, the CEP will operate the Facility with Automatic Generation Control (AGC) equipment, speed governors, and voltage regulators in-service, except at such times when operational constraints of the equipment prevent AGC operation.
4. **Start-up Time:** Upon notification by the Company, the CEP's Facility shall provide its capacity within 15 minutes from a cold-start condition to maximum capacity.
5. **Minimum Run Time:** Minimum run time for the CEP's unit shall be 1 hour.

**BASIS FOR MONTHLY CAPACITY PAYMENT CALCULATION:**

1. **Monthly Availability Factor:** The Monthly Availability Factor of the CEP's generating facility will be calculated by averaging the Hourly Availability Factors for each hour of the Monthly Period. The Hourly Availability Factor may not exceed 100% and shall be defined as the hourly Committed Capacity expressed as a percentage of Contracted Capacity to the nearest whole percentile. The CEP is required to achieve a minimum Monthly Availability Factor of 90% in order to meet the MPS and be eligible to receive a Monthly Capacity Payment. Periods of Annual Planned Maintenance will be excluded from the calculation of the Monthly Availability Factor. For purposes of calculating the Monthly Availability Factor, the CEP's Committed Capacity may not exceed its Contracted Capacity.

ISSUED BY: C. R. Black, President

DATE EFFECTIVE: July 29, 2008



FIRST REVISED SHEET NO. 8.414  
CANCELS ORIGINAL SHEET NO. 8.414

2. **Monthly Capacity Factor:** In addition to the MPS for Monthly Availability, the CEP shall provide capacity into the Company's electric grid in order to meet or exceed a Monthly Capacity Factor of 80%. The Monthly Capacity Factor for the period April 1st through October 31st shall be defined as the sum of 80% of the Monthly Average On-peak Operating Factor plus 20% of the Monthly Average Off-peak Operating Factor. The Monthly Capacity Factor for the period November 1st through March 31st shall be defined as the sum of 90% of the Monthly Average On-peak Operating Factor plus 10% of the Monthly Average Off-peak Operating Factor.
  - a. **Operating Factor:** The CEP shall endeavor to provide capacity in the amount dispatched by the Company. The Company may at times request capacity in an amount that exceeds the Committed Capacity as declared by CEP the previous day.

However, the Operating Factor may not exceed 100% and shall be defined as the actual energy received during each hour that the CEP unit is dispatched by the Company divided by the lesser of the CEP's Committed Capacity or the capacity requested by the Company for that hour, expressed to the nearest whole percentile.
  - b. **Monthly Average On-peak Operating Factor:** The monthly average of the Operating Factor for all hours the CEP unit has been dispatched during On-peak Hours will be termed the Monthly Average On-peak Operating Factor.
  - c. **Monthly Average Off-peak Operating Factor:** The monthly average of the Operating Factor for all hours the CEP unit has been dispatched during Off-peak Hours will be termed the Monthly Average Off-peak Operating Factor.
3. **Off-Peak and On-Peak Hours:** Those weekday hours occurring April 1 through October 31, from 12:00 noon to 9:00 p.m. and November 1 through March 31, from 6:00 a.m. to 10:00 a.m. and from 6:00 p.m. to 10:00 p.m. All other weekday hours and weekends shall be deemed Off-peak Hours including the following holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day. The Company shall have the right to change such On-peak Hours by providing written notice to CEP a minimum of 90 calendar days prior to such change.

ISSUED BY: C. R. Black, President

DATE EFFECTIVE: July 29, 2008



FOURTH REVISED SHEET NO. 8.416  
CANCELS THIRD REVISED SHEET NO. 8.416

Continued from Sheet No. 8.414

4. **Annual Scheduled Maintenance:** Each year the CEP shall prepare, coordinate, and provide by April 1st all planned maintenance with the Company. The Company will review and approve annual/major scheduled maintenance by July 1st for the balance of the current year and following calendar year. A maximum of 10 days (240 hours) each year for annual maintenance and a maximum of 4 weeks (672 hours) every fifteenth year for major maintenance will be allowed. Scheduled maintenance shall not be planned during January, July, August, or December. At the option of the CEP and with written consent from the Company, scheduled outage time may be utilized during any other months to improve the CEP's Availability and Capacity Factors and such scheduled outage hours will be disregarded from the Monthly Availability Factor and Capacity Factor calculations. However, once allowable maintenance hours have been utilized, all other hours during the year will be considered in Availability and Capacity Factor calculations.
5. **Monthly Capacity Payment:** Starting with the CEP's Commercial In-Service Date, for months when the CEP unit has been dispatched (provided that CEP has achieved at least a 90% Monthly Availability Factor), the Monthly Capacity Payment for each Monthly Period shall be calculated according to the following:
  - a. In the event that the Monthly Capacity Factor is less than 80%, no Monthly Capacity Payment shall be paid to the CEP. That is:

$$MCP = \$0$$

- b. In the event that the Monthly Capacity Factor is greater than or equal to 80% but less than 90%, the Monthly Capacity Payment shall be calculated from the following formula:

$$MCP = [(BCC) \times (.02 \times (CF - 45))] \times CC$$

Continued on Sheet No. 8.418

ISSUED BY: G. L. Gillette, President

DATE EFFECTIVE: July 21, 2015



ORIGINAL SHEET NO. 8.418

- c. In the event that the Monthly Capacity Factor is greater than or equal to 90%, the Monthly Capacity Payment shall be calculated from the following formula:

$$MCP = (BCC) \times CC$$

Where:

- MCP = Monthly Capacity Payment in dollars.  
BCC = Base Capacity Credit in \$/KW-Month (*as exemplified by the Payment Schedules included in this Appendix for the minimum contract term under Capacity Payment Options 1, 2, 3 and 4.*)  
CC = Contracted Capacity in KW  
CF = Monthly Capacity Factor; or

During April 1 - October 31:

$$= 80\% \times \text{Monthly Average On-peak Operating Factor} + 20\% \times \text{Monthly Average Off-peak Operating Factor}$$

During November 1 - March 31:

$$= 90\% \times \text{Monthly Average On-peak Operating Factor} + 10\% \times \text{Monthly Average Off-peak Operating Factor}$$

6. **Non-Dispatch Condition:** The CEP may be entitled to a Monthly Capacity Payment (BCC x CC) even if the CEP's unit was not dispatched by the Company during a Monthly Period. In this instance however, in order to cover the Company's operating reserve criteria, the CEP unit must have achieved a minimum Monthly Availability Factor of 90% for the Monthly Period to be eligible to receive a Monthly Capacity Payment.

In the event the CEP unit is dispatched during one but not the other (On-peak vs. Off-peak) period during the month, the CEP's Monthly Average Operating Factor for the "non-dispatched" period will be set equal to the Monthly Average Operating Factor achieved during the "dispatched" period, for the purpose of calculating the Monthly Capacity Factor, as defined in Paragraph 2 above.

The CEP may be entitled to a Monthly Capacity Payment when the CEP's unit is out of service during the month for allowable scheduled maintenance in accordance with the Paragraph 4 above.

ISSUED BY: C. R. Black, President

DATE EFFECTIVE: May 22, 2007





~~TENTH-ELEVENTH~~ REVISED  
SHEET NO. 8.422  
CANCELS ~~NINTH-TENTH~~ REVISED  
SHEET NO. 8.422

Continued from Sheet No. 8.418

**PARAMETERS FOR AVOIDED CAPACITY COSTS**

Beginning with the in-service date (~~51/1/2024~~2023) of the Company's Designated Avoided Unit, a ~~220MW~~245MW (Winter Rating) natural gas-fired Combustion Turbine, for a 1 year deferral:

		VALUE
$VAC_m$	= Company's monthly value of avoided capacity, \$/kW/month, for each month of year n	<del>6.904</del> <u>6.95</u>
$K$	= present value of carrying charges for one dollar of investment over L years with carrying charges computed using average annual rate base and assumed to be paid at the middle of each year and present value to the middle of the first year	<del>4.418</del> <u>4.5213</u>
$I_n$	= total direct and indirect cost, in mid-year \$/kW including AFUDC but excluding CWIP, of the Designated Avoided Unit(s) with an in-service date of year n, including all identifiable and quantifiable costs relating to the construction of the Designated Avoided Unit that would have been paid had the Designated Avoided Unit(s) been constructed	<del>843.83</del> <u>590.03</u>
$O_n$	= total fixed operation and maintenance expense for the year n, in mid-year \$/kW/year, of the Designated Avoided Unit(s);	<del>13.496</del> <u>26</u>
$i_p$	= annual escalation rate associated with the plant cost of the Designated Avoided Unit(s)	<del>2.54</del> <u>%</u>
$i_o$	= annual escalation rate associated with the operation and maintenance expense of the Designated Avoided Unit(s);	2.4%
$r$	= discount rate, defined as the Company's incremental after tax cost of capital;	<del>6.976</del> <u>7.080</u> %

Continued to Sheet No. 4.424

ISSUED BY: ~~G. L. Gillette~~N. G. Tower,  
President

DATE EFFECTIVE: July 13, 2017



~~TENTH-ELEVENTH~~ REVISED  
SHEET NO. 8.424  
CANCELS ~~NINTH-TENTH~~ REVISED  
SHEET NO. 8.424

Continued from Sheet No. 8.422

- L = expected life of the Designated Avoided Unit(s); and 30
- n = year for which the Designated Avoided Unit is deferred starting with its original anticipated in-service date and ending with the termination of the contract for the purchase of firm capacity and energy. ~~2021~~2023
- A<sub>m</sub> = monthly early capacity payments to be made to the CEP for each month of the contract year n, in \$/kW/month, if payments start in ~~2015~~2018; ~~4.07~~2.59
- m = Earliest year in which early capacity payments to the CEP may begin; ~~2017~~2018\*
- F = the cumulative present value, in the year contractual payments will begin, of the avoided capital cost component of capacity payments over the term of the contract which would have been made had capacity payments commenced with the anticipated in-service date of the Designated Avoided Unit(s); ~~439.84~~311.22\*
- t = the term, in years, of the contract for the purchase of firm capacity if early capacity payments commence in year m; 14\*

\* Actual values will be determined based on the capacity payment start date and contract term selected by the CEP.

Continued to Sheet No. 8.426

ISSUED BY: ~~G. L. Gillette~~N. G. Tower,  
President

DATE EFFECTIVE: ~~July 13, 2017~~



~~TENTH-ELEVENTH~~ REVISED  
SHEET NO. 8.426  
CANCELS ~~NINTH-TENTH~~ REVISED  
SHEET NO. 8.426

Continued from Sheet No. 8.424

2021 COMBUSTION TURBINE - AVOIDED UNIT						
MONTHLY CAPACITY PAYMENT RATE (\$/KW-MONTH)						
NON-LEVELIZED PAYMENT OPTIONS						
		OPTION 1		OPTION 2		
		NORMAL PAYMENT		EARLY PAYMENT		
CONTRACT YEAR		Starting 5/1/21	Starting 5/1/20	Starting 5/1/19	Starting 5/1/18	Starting 5/1/17
FROM	TO	\$/KW-mo	\$/KW-mo	\$/KW-mo	\$/KW-mo	\$/KW-mo
5/1/17	4/30/18					4.07
<del>5/1/18</del>	<del>4/30/19</del>				<del>4.60</del>	<del>3.90</del>
5/1/19	4/30/20			5.23	4.71	3.74
5/1/20	4/30/21		5.98	5.36	4.83	3.58
5/1/21	4/30/22	6.90	6.13	5.49	4.95	3.43
5/1/22	4/30/23	7.07	6.28	5.63	5.07	3.28
5/1/23	4/30/24	7.25	6.44	5.76	5.20	3.15
5/1/24	4/30/25	7.43	6.60	5.91	5.33	3.01
5/1/25	4/30/26	7.61	6.76	6.05	5.46	2.89
5/1/26	4/30/27	7.80	6.93	6.21	5.60	2.77
5/1/27	4/30/28	7.99	7.10	6.36	5.73	2.65
5/1/28	4/30/29	8.19	7.28	6.52	5.88	2.54
5/1/29	4/30/30	8.39	7.46	6.68	6.02	2.43
5/1/30	4/30/31	8.60	7.64	6.84	6.17	2.33

ISSUED BY: ~~G. L. Gillette~~ N. G. Tower,  
President

DATE EFFECTIVE: July 13, 2017



~~TENTH-ELEVENTH~~ REVISED  
SHEET NO. 8.426  
CANCELS ~~NINTH-TENTH~~ REVISED  
SHEET NO. 8.426

2023 COMBUSTION TURBINE - AVOIDED UNIT  
MONTHLY CAPACITY PAYMENT RATE ( \$/KW-MONTH)  
NON-LEVELIZED PAYMENT OPTIONS

		OPTION 1	OPTION 2				
		NORMAL PAYMENT	EARLY PAYMENT				
CONTRACT YEAR		Starting 1/1/2023	Starting 1/1/2022	Starting 1/1/2021	Starting 1/1/2020	Starting 1/1/2019	Starting 1/1/2018
FROM	TO	\$/kW-mo	\$/kW-mo	\$/kW-mo	\$/kW-mo	\$/kW-mo	\$/kW-mo
-	-	-	-	-	-	-	-
1/1/18	12/31/18	-	-	-	-	-	2.59
1/1/19	12/31/19	-	-	-	-	2.92	2.66
1/1/20	12/31/20	-	-	-	3.30	2.99	2.72
1/1/21	12/31/21	-	-	3.75	3.38	3.06	2.79
1/1/22	12/31/22	-	4.29	3.84	3.46	3.13	2.85
1/1/23	12/31/23	4.95	4.39	3.93	3.54	3.21	2.92
1/1/24	12/31/24	5.07	4.50	4.02	3.63	3.28	2.99
1/1/25	12/31/25	5.19	4.61	4.12	3.71	3.36	3.06
1/1/26	12/31/26	5.31	4.72	4.22	3.80	3.44	3.14
1/1/27	12/31/27	5.44	4.83	4.32	3.89	3.53	3.21
1/1/28	12/31/28	5.57	4.95	4.42	3.99	3.61	3.29
1/1/29	12/31/29	5.71	5.06	4.53	4.08	3.70	3.37
1/1/30	12/31/30	5.84	5.19	4.64	4.18	3.79	3.45
1/1/31	12/31/31	5.98	5.31	4.75	4.28	3.88	3.53
1/1/32	12/31/32	6.13	5.44	4.87	4.38	3.97	3.62

Continued to Sheet No. 8.427

ISSUED BY: G. L. Gillette N. G. Tower,  
President

DATE EFFECTIVE: July 13, 2017





**FIFTH SIXTH** REVISED SHEET NO.  
8.427  
CANCELS **FOURTH FIFTH**  
REVISED SHEET NO. 8.427

Continued from Sheet No. 8.426

2021 COMBUSTION TURBINE - AVOIDED UNIT						
MONTHLY CAPACITY PAYMENT RATE ( \$/KW-MONTH)						
LEVELIZED PAYMENT OPTIONS						
		OPTION 3	OPTION 4			
		LEVELIZED NORMAL PAYMENT	EARLY LEVELIZED PAYMETB			
CONTRACT YEAR		Starting 5/1/21	Starting 5/1/20	Starting 5/1/19	Starting 5/1/18	Starting 5/1/17
FROM	TO	\$/KW-mo	\$/KW-mo	\$/KW-mo	\$/KW-mo	\$/KW-mo
5/1/17	4/30/18					4.58
5/1/18	4/30/19				5.13	4.59
5/1/19	4/30/20			5.78	5.15	4.61
5/1/20	4/30/21		6.56	5.80	5.17	4.62
5/1/21	4/30/22	7.51	6.58	5.82	5.18	4.64
5/1/22	4/30/23	7.53	6.61	5.85	5.20	4.66
5/1/23	4/30/24	7.56	6.63	5.87	5.22	4.68
5/1/24	4/30/25	7.59	6.66	5.89	5.24	4.70
5/1/25	4/30/26	7.62	6.68	5.91	5.26	4.71
5/1/26	4/30/27	7.65	6.71	5.94	5.29	4.73
5/1/27	4/30/28	7.68	6.74	5.96	5.31	4.75
5/1/28	4/30/29	7.71	6.77	5.98	5.33	4.77
5/1/29	4/30/30	7.74	6.79	6.01	5.35	4.79
5/1/30	4/30/31	7.77	6.82	6.04	5.38	4.82

ISSUED BY: G. L. Gillette N. G. Tower,  
President

DATE EFFECTIVE: July 13, 2017





~~FIFTH-SIXTH~~ REVISED SHEET NO.  
8.427  
CANCELS ~~FOURTH-FIFTH~~  
REVISED SHEET NO. 8.427

2023 COMBUSTION TURBINE - AVOIDED UNIT  
MONTHLY CAPACITY PAYMENT RATE ( \$/KW-MONTH)  
LEVELIZED PAYMENT OPTIONS

		OPTION 3	OPTION 4				
		LEVELIZED NORMAL PAYMENT	EARLY LEVELIZED PAYMENT				
CONTRACT YEAR		Starting 1/1/2023	Starting 1/1/2022	Starting 1/1/2021	Starting 1/1/2020	Starting 1/1/2019	Starting 1/1/2018
FROM	TO	\$/kW-mo	\$/kW-mo	\$/kW-mo	\$/kW-mo	\$/kW-mo	\$/kW-mo
-	-	-	-	-	-	-	-
<u>1/1/18</u>	<u>12/31/18</u>	-	-	-	-	-	<u>2.95</u>
<u>1/1/19</u>	<u>12/31/19</u>	-	-	-	-	<u>3.29</u>	<u>2.95</u>
<u>1/1/20</u>	<u>12/31/20</u>	-	-	-	<u>3.69</u>	<u>3.29</u>	<u>2.96</u>
<u>1/1/21</u>	<u>12/31/21</u>	-	-	<u>4.16</u>	<u>3.69</u>	<u>3.30</u>	<u>2.97</u>
<u>1/1/22</u>	<u>12/31/22</u>	-	<u>4.72</u>	<u>4.16</u>	<u>3.70</u>	<u>3.31</u>	<u>2.97</u>
<u>1/1/23</u>	<u>12/31/23</u>	<u>5.39</u>	<u>4.73</u>	<u>4.17</u>	<u>3.71</u>	<u>3.32</u>	<u>2.98</u>
<u>1/1/24</u>	<u>12/31/24</u>	<u>5.41</u>	<u>4.74</u>	<u>4.18</u>	<u>3.72</u>	<u>3.33</u>	<u>2.99</u>
<u>1/1/25</u>	<u>12/31/25</u>	<u>5.42</u>	<u>4.75</u>	<u>4.19</u>	<u>3.73</u>	<u>3.33</u>	<u>3.00</u>
<u>1/1/26</u>	<u>12/31/26</u>	<u>5.43</u>	<u>4.76</u>	<u>4.20</u>	<u>3.74</u>	<u>3.34</u>	<u>3.00</u>
<u>1/1/27</u>	<u>12/31/27</u>	<u>5.45</u>	<u>4.77</u>	<u>4.22</u>	<u>3.75</u>	<u>3.35</u>	<u>3.01</u>
<u>1/1/28</u>	<u>12/31/28</u>	<u>5.46</u>	<u>4.78</u>	<u>4.23</u>	<u>3.76</u>	<u>3.36</u>	<u>3.02</u>
<u>1/1/29</u>	<u>12/31/29</u>	<u>5.47</u>	<u>4.80</u>	<u>4.24</u>	<u>3.77</u>	<u>3.37</u>	<u>3.03</u>
<u>1/1/30</u>	<u>12/31/30</u>	<u>5.49</u>	<u>4.81</u>	<u>4.25</u>	<u>3.78</u>	<u>3.38</u>	<u>3.04</u>
<u>1/1/31</u>	<u>12/31/31</u>	<u>5.50</u>	<u>4.82</u>	<u>4.26</u>	<u>3.79</u>	<u>3.39</u>	<u>3.04</u>
<u>1/1/32</u>	<u>12/31/32</u>	<u>5.52</u>	<u>4.84</u>	<u>4.27</u>	<u>3.80</u>	<u>3.40</u>	<u>3.05</u>

Continued to Sheet No. 8.428

ISSUED BY: G. L. Gillette N. G. Tower,  
President

DATE EFFECTIVE: July 13, 2017



~~EIGHTH-NINTH~~ REVISED SHEET  
NO. 8.428  
CANCELS ~~SEVENTH-EIGHTH~~  
REVISED SHEET NO. 8.428

Continued from Sheet No. 8.427

**BASIS FOR MONTHLY ENERGY PAYMENT CALCULATION:**

1. **Energy Payment Rate:** Prior to the in-service date of the avoided unit, the CEP's Energy Payment Rate shall be the Company's As-Available Energy Payment Rate (AEPR), as described in Appendix B. Starting the in-service date of the avoided unit, the basis for determining the Energy Payment Rate will be whether:
  - a. The Company has dispatched the CEP's unit on AGC; or
  - b. The Company has dispatched the CEP's unit off AGC and the CEP is operating its unit at or below the dispatched level; or
  - c. The Company has dispatched the CEP's unit off AGC but the CEP is operating its unit above the dispatched level; or
  - d. The Company has not dispatched the CEP's unit but the CEP is providing capacity and energy.

Note: For any given hour the CEP unit must be operating on AGC a minimum of 30 minutes to qualify under case (a).

The CEP's total monthly energy payment shall equal; (1) the sum of the hourly energy at the Unit Energy Payment Rate (UEPR), when the CEP's unit was dispatched by the Company, plus (2) the sum of the hourly energy at the corresponding hourly AEPR when the CEP's unit was operating at times other than when the Company dispatched the unit.

2. **Unit Energy Payment Rate:** Starting the in-service date of the avoided unit, the CEP will be paid at the UEPR for energy provided in Paragraph 1.a, Paragraph 1.b and that portion of the energy provided up to the dispatched level in Paragraph 1.c as defined above. The UEPR, which is based on the Company's Designated Avoided Unit and Heat Rate value of 40,944~~11,110~~ Btu/kWh, will be calculated monthly by the following formula:

$$UEPR = FC + O_v$$

where;

$O_v$  = Unit Variable Operation & Maintenance Expense in \$/MWH.

Continued to Sheet No. 8.434

ISSUED BY: G. L. Gillette~~N. G. Tower~~,  
President

DATE EFFECTIVE: July 13, 2017



~~EIGHTH-NINTH~~ REVISED SHEET  
NO. 8.434  
CANCELS ~~SEVENTH-EIGHTH~~  
REVISED SHEET NO. 8.434

Continued from Sheet No. 8.428

FC = Fuel Component of the Energy Payment in \$/MWH as defined by:

$$FC = \frac{10,94411,110 \text{ Btu/kWh} \times FP}{1,000}$$

where;

FP = Fuel Price in \$/MMBTU determined by:

$$FP = GC / (1 - FRP) + TC$$

where;

GC = Fuel Price in \$/MMBTU determined by taking the first publication of each month of Inside FERC's Gas Market Report low price quotation under the column titled "Index" for "Florida Gas Transmission Co., "Zone 2", listings.

TC = then currently approved Florida Gas Transmission (FGT) Company tariff rate in \$/MMBTU for forward haul Interruptible Market Area Transportation (ITS-1), including usage and surcharges.

FRP = then currently approved FGT Company tariff Fuel Reimbursement Charge Percentage in percent applicable to forward hauls for recovery of costs associated with the natural gas used to operate FGT's pipeline system.

3. **As-Available Energy Payment Rate (AEPR):** For energy provided and not covered under Paragraph 2 above, the AEPR will be applicable and will be based on the system avoided energy cost as defined in Appendix B.

Continued to Sheet No. 8.436

ISSUED BY: ~~G. L. Gillette~~ N. G. Tower,  
President

DATE EFFECTIVE: July 13, 2017



~~TENTH-ELEVENTH~~ REVISED  
SHEET NO. 8.436  
CANCELS ~~NINTH-TENTH~~ REVISED  
SHEET NO. 8.436

Continued from Sheet No. 8.428

**PARAMETERS FOR AVOIDED UNIT ENERGY AND VARIABLE OPERATION AND MAINTENANCE COSTS**

Beginning on ~~May 1, 2020~~January 1, 2023, to the extent that the Designated Avoided Unit(s) would have been operated had it been installed by the Company:

	VALUE
$O_v$ = total variable operating and maintenance expense, in \$/MWH, of the Designated Avoided Unit(s), in year n	<del>2.48</del> <u>25</u>
H = The average annual heat rate, in British Thermal Units (Btus) per kilowatt-hour (Btu/kWh), of the Designated Avoided Unit(s)	<del>10,944</del> <u>11,110</u>

ISSUED BY: ~~G. L. Gillette~~N. G. Tower,  
President

DATE EFFECTIVE: ~~July 13, 2017~~



SECOND REVISED SHEET NO. 8.438  
CANCELS FIRST REVISED SHEET NO. 8.438

RESERVED FOR FUTURE USE

ISSUED BY: G. L. Gillette, President

DATE EFFECTIVE: July 13, 2010





TWENTIETH REVISED SHEET NO. 8.440  
CANCELS NINETEENTH REVISED SHEET NO. 8.440

RESERVE FOR FUTURE USE

ISSUED BY: G. L. Gillette, President

DATE EFFECTIVE: July 13, 2010



FIRST REVISED SHEET NO. 8.442  
CANCELS ORIGINAL SHEET NO. 8.442

RESERVED FOR FUTURE USE

ISSUED BY: G. L. Gillette, President

DATE EFFECTIVE: July 13, 2010



FIRST REVISED SHEET NO. 8.444  
CANCELS ORIGINAL SHEET NO. 8.444

RESERVED FOR FUTURE USE

ISSUED BY: G. L. Gillette, President

DATE EFFECTIVE: July 13, 2010



FIRST REVISED SHEET NO. 8.446  
CANCELS ORIGINAL SHEET NO. 8.446

RESERVED FOR FUTURE USE

ISSUED BY: G. L. Gillette, President

DATE EFFECTIVE: July 13, 2010



SECOND REVISED SHEET NO. 8.448  
CANCELS FIRST REVISED SHEET NO. 8.448

RESERVED FOR FUTURE USE

ISSUED BY: G. L. Gillette, President

DATE EFFECTIVE: July 13, 2010





TWENTY-SECOND REVISED SHEET NO. 8.450  
CANCELS TWENTY-FIRST REVISED SHEET NO. 8.450

RESERVED FOR FUTURE USE

ISSUED BY: G. L. Gillette, President

DATE EFFECTIVE: July 13, 2010



SECOND REVISED SHEET NO. 8.452  
CANCELS FIRST REVISED SHEET NO. 8.452

RESERVED FOR FUTURE USE

ISSUED BY: G. L. Gillette, President

DATE EFFECTIVE: July 13, 2010



SECOND REVISED SHEET NO. 8.454  
CANCELS FIRST REVISED SHEET NO. 8.454

RESERVED FOR FUTURE USE

ISSUED BY: G. L. Gillette, President

DATE EFFECTIVE: July 13, 2010



SECOND REVISED SHEET NO. 8.456  
CANCELS FIRST REVISED SHEET NO. 8.456

RESERVED FOR FUTURE USE

ISSUED BY: G. L. Gillette, President

DATE EFFECTIVE: July 13, 2010



SECOND REVISED SHEET NO. 8.458  
CANCELS FIRST REVISED SHEET NO. 8.458

RESERVED FOR FUTURE USE

ISSUED BY: G. L. Gillette, President

DATE EFFECTIVE: July 13, 2010





TWENTY-SECOND REVISED SHEET NO. 8.460  
CANCELS TWENTY-FIRST REVISED SHEET NO. 8.460

RESERVED FOR FUTURE USE

ISSUED BY: G. L. Gillette, President

DATE EFFECTIVE: July 13, 2010

**TAMPA ELECTRIC COMPANY**

**ORIGINAL SHEET NO. 8.700**

**GENERAL STANDARDS FOR SAFETY  
AND INTERCONNECTION OF COGENERATION AND  
SMALL POWER PRODUCTION FACILITIES TO  
THE ELECTRIC UTILITY SYSTEM**

The following section is based on Florida Public Service Commission (FPSC) Rule 25-17.087, Florida Administrative Code, (F.A.C.), Interconnection and Standards and is applicable throughout Tampa Electric Company's (the Company's) service area:

1. The Company shall interconnect with any qualifying facility (qf) which:
  - a. is in its service area;
  - b. requests interconnection;
  - c. agrees to meet system standards specified in this Rule;
  - d. agrees to pay the cost of interconnection; and
  - e. signs an interconnection agreement.
2. Nothing in this rule shall be construed to preclude the Company from evaluating each request for interconnection on its own merits and modifying the general standards specified in this Rule to reflect the result of such an evaluation.
3. Where the Company refuses to interconnect with a qf or attempts to impose unreasonable standards pursuant to subsection (2) of this rule, the qf may petition the FPSC for relief. The Company shall have the burden of demonstrating to the FPSC why interconnection with the qfs should not be required or that the standards the Company seeks to impose on the qfs pursuant to subsection (2) are reasonable.
4. Upon a showing of credit worthiness, the qfs shall have the option of making monthly installment payments over a period no longer than 36 months toward the full cost of interconnection. However, where the qfs exercises that option, the Company shall charge interest on the amount owing. The Company shall charge such interest at the 30 day highest grade commercial paper rate. In any event, no the Company may not bear the cost of interconnection.

Continued to Sheet No. 8.705

**ISSUED BY: J. B. Ramil, President**

**DATE EFFECTIVE: March 30, 1999**

**TAMPA ELECTRIC COMPANY**

**ORIGINAL SHEET NO. 8.705**

Continued from Sheet No. 8.700

5. **Application for Interconnection:** A qf shall not operate electric generating equipment in parallel with the Company's electric system without the prior written consent of the Company. Formal application for interconnection shall be made by the qf prior to the installation of any generation related equipment. This application shall be accompanied by the following:

- a. Physical layout drawings, including dimensions;
- b. All associated equipment specifications and characteristics including technical parameters, ratings, basic impulse levels, electrical main one-line diagrams, schematic diagrams, system protections, frequency, voltage, current and interconnection distance;
- c. Functional and logic diagrams, control and meter diagrams, conductor sizes and length, and any other relevant data which might be necessary to understand the proposed system and to be able to make a coordinated system;
- d. Power characteristics in watts and vars;
- e. Expected radio-noise, harmonic generation and telephone interference factor;
- f. Synchronizing methods; and
- g. Operating/instruction manuals.

Any subsequent change in the system must also be submitted for review and written approval prior to actual modification. The above mentioned review, recommendations and approval by the Company do not relieve the qf from complete responsibility for the adequate engineering design, construction and operation of the qf equipment and for any liability for injuries to property or persons associated with any failure to perform in a proper and safe manner for any reason.

Continued to Sheet No. 8.710

**ISSUED BY: J. B. Ramil, President**

**DATE EFFECTIVE: March 30, 1999**

**TAMPA ELECTRIC COMPANY**

**ORIGINAL SHEET NO. 8.710**

Continued from Sheet No. 8.705

6. **Personnel Safety:** Adequate protection and safe operational procedures must be developed and followed by the joint system. These operating procedures must be approved by both the Company and the qf. The qf shall be required to furnish, install, operate and maintain in good order and repair, and be solely responsible for, without cost to the Company, all facilities required for the safe operation of the generation system in parallel with the Company's system.

The qf shall permit the Company's employees to enter upon its property at any reasonable time for the purpose of inspection and/or testing the qf's equipment, facilities, or apparatus. Such inspections shall not relieve the qf from its obligation to maintain its equipment in safe and satisfactory operating condition.

The Company's approval of isolating devices used by the qf will be required to ensure that these will comply with the Company's switching and tagging procedure for safe working clearances.

- a. **Disconnect switch:** A manual disconnect switch, of the visible load break type, to provide a separation point between the qf's generation system and the Company's system, shall be required. The Company will specify the location of the disconnect switch. The switch shall be mounted separate from the meter socket and shall be readily accessible to the Company and be capable of being locked in the open position with a Company padlock. The Company may reserve the right to open the switch (i.e., isolating the qf's generation system) without prior notice to the qf. To the extent practicable, however, prior notice shall be given.

Continued to Sheet No. 8.715

**ISSUED BY: J. B. Ramil, President**

**DATE EFFECTIVE: March 30, 1999**

**TAMPA ELECTRIC COMPANY**

**ORIGINAL SHEET NO. 8.715**

Continued from Sheet No. 8.710

Any of the following conditions shall be cause for disconnection:

- i. The Company's system emergencies and/or maintenance requirements; Hazardous conditions existing on the qf's generating or protective equipment as determined by the Company;
  - ii. Adverse effects of the qf's generation to the Company's other electric consumers and/or system as determined by the Company;
  - iii. Failure of the qf to maintain any required insurance; or
  - iv. Failure of the qf to comply with any existing or future regulations, rules, orders or decisions of any governmental or regulatory authority having jurisdiction over the qf's electric generating equipment or the operation of such equipment.
- b. **Responsibility and Liability:** The Company and the qf shall each be responsible for its own facilities. The Company and the qf shall each be responsible for ensuring adequate safeguards for other Company customers, the Company and qf personnel and equipment, and for the protection of its own generating system. The Company and the qf shall each indemnify and save the other harmless from any and all claims, demands, costs, or expense for loss, damage, or injury to persons or property of the other caused by, arising out of, or resulting from:
- i. Any act or omission by a party, or that party's contractors, agents, servants and employees in connection with the installation or operation of that party's generation system or the operation thereof in connection with the other party's system;
  - ii. Any defect in, failure of, or fault related to a party's generation system;
  - iii. The negligence of a party or negligence of that party's contractors, agents, servants or employees; or

Continued to Sheet No. 8.720

**ISSUED BY: J. B. Ramil, President**

**DATE EFFECTIVE: March 30, 1999**





FIRST REVISED SHEET NO. 8.720  
CANCELS ORIGINAL SHEET NO. 8.720

Continued from Sheet No. 8.715

- iv. Any other event or act that is the result of, or proximately caused by a party.

For the purpose of this paragraph, the term party shall mean either the Company or QF, as the case may be.

With respect to a QF that is the state, a state agency or subdivision (as those terms are defined in Section 768.28(2), Florida Statutes, or the successor thereto), the obligations of Customer set forth in Paragraph 6.b above shall be subject to Section 768.28 (or the successor thereto), including the limitations contained therein. With respect to a QF that is the United States of America, or agency or subdivision thereof, the obligations set forth in the first sentence of Paragraph 6.b shall not apply. In either case, the Company reserves its rights under Section 768.28 (or the successor thereto), and the Federal Tort Claims Act (or the successor thereto), as applicable, including, but not limited to, the right to pursue legislative relief.

c. **Insurance:** The QF shall deliver to the Company, at least fifteen (15) days prior to the start of any interconnection work, a certificate of insurance certifying the QF's coverage under a liability insurance policy issued by a reputable insurance company authorized to do business in the State of Florida naming the QF as named insured, and the Company as an additional named insured, which policy shall contain a broad form contractual endorsement specifically covering the liabilities accepted under this agreement arising out of the interconnection to the QF, or caused by operation of any of the QF's equipment or by the QF's failure to maintain its equipment in satisfactory and safe operating condition.

- i. In subsequent years, a certificate of insurance renewal must be provided annually to the Company indicating the QF's continued coverage as described herein. Renewal certification shall be sent to:

Tampa Electric Company  
Risk Management Department  
P. O. Box 111  
Tampa, FL 33601

- ii. The policy providing such coverage for a Standard Offer Contract shall provide public liability insurance, including coverage for personal injury, death and property damage, in an amount not less than \$1,000,000 for each occurrence; provided however, if QF has insurance with limits greater than the minimum limits required herein, the QF shall set any amount higher than the minimum limits required by the Company to satisfy the insurance requirements of this Agreement.

Continued to Sheet No. 8.725

ISSUED BY: G. L. Gillette, President

DATE EFFECTIVE: June 25, 2013



FIRST REVISED SHEET NO. 8.725  
CANCELS ORIGINAL SHEET NO. 8.725

Continued from Sheet No. 8.720

iii. The policy providing such coverage for a Negotiated Contract shall provide public liability insurance, including coverage for personal injury, death and property damage, in an amount not less than \$1,000,000 for each occurrence. The Parties may negotiate the amount of insurance over \$1,000,000.

iv. The above required policy shall be endorsed with a provision requiring the insurance company will notify the Company thirty (30) days prior to the effective date of cancellation or material change in said policy.

v. The QF shall pay all premiums and other charges due on said policy and keep said policy in force during the entire period of interconnection with the Company.

vi. As an alternative to the foregoing insurance requirement, the QF may self-insure upon receiving the Company's prior written approval. The Company will provide the QF with written notification of approval or disapproval of a self-insurance application with 30 business days after the Company's receipt of all documentation required to support the application. In the event that the Company approves QF's request to self-insure, QF shall provide proof of its continuing ability to self-insure to the Company on an annual basis, or more frequently if requested by the Company. Notwithstanding the foregoing, the minimum insurance coverage amount set forth above shall be limited for the state, a state agency or subdivision (as those terms are defined in Section 768.28(2), or the successor thereto), to the maximum dollar amounts set forth in Section 768.28(5), or the successor thereto.

7. **Protection and Operation:** It will be the responsibility of the QF to provide all devices necessary to protect the QF's equipment from damage by the abnormal conditions and operations which occur on the Company system that result from interruptions and restorations of service by the Company's equipment and personnel. The QF shall protect its generator and associated equipment from overvoltage, undervoltage, overload, short circuits (including ground fault condition), open circuits, phase unbalance and reversal, over or under frequency condition, and other injurious electrical conditions that may arise on the Company's system and any reclose attempt by the Company.

The Company may reserve the right to perform such tests as it deems necessary to ensure safe and efficient protection and operation of the QF's equipment.

Continued to Sheet No. 8.730

ISSUED BY: G. L. Gillette, President

DATE EFFECTIVE: June 25, 2013

TAMPA ELECTRIC COMPANY

ORIGINAL SHEET NO. 8.730

Continued from Sheet No. 8.725

a. **Loss of source:** The qf shall provide, or the Company will provide at the qf's expense, approved protective equipment necessary to immediately, completely, and automatically disconnect the qf's generation from the Company's system in the event of a fault on the qf's system, a fault on the Company's system, or loss of source on the Company's system. Disconnection must be completed within the time specified by the Company in its standard operating procedure for its electric system for loss of a source on the Company's system.

This automatic disconnecting device may be of the manual or automatic reclose type and shall not be capable of reclosing until after service is restored by the Company. The type and size of the device shall be approved by the Company depending upon the installation. Adequate test data or technical proof that the device meets the above criteria must be supplied by the qf to the Company. The Company shall approve a device that will perform the above functions at minimal capital and operating costs to the qf.

b. **Coordination and Synchronization:** The qf shall be responsible for coordination and synchronization of the qf's equipment with the Company's electrical system, and assumes all responsibility for damage that may occur from improper coordination or synchronization of the generator with the Company's system.

c. **Electrical characteristics:** Single phase generator interconnections with the Company are permitted at power levels up to 20 KW. For power levels exceeding 20 KW, a three phase balanced interconnection will normally be required. For the purpose of calculating connected generation, 1 horsepower equals 1 kilowatt. The qf shall interconnect with the Company at the voltage of the available distribution or transmission line of the Company for the locality of the interconnection, and shall utilize one of the standard connections (single phase, three phase, wye, delta) as approved by the Company.

Continued to Sheet No. 8.735

ISSUED BY: J. B. Ramil, President

DATE EFFECTIVE: March 30, 1999

**TAMPA ELECTRIC COMPANY**

**ORIGINAL SHEET NO. 8.735**

Continued from Sheet No. 8.730

The Company may reserve the right to require a separate transformation and/or service for a qf's generation system, at the qf's expense. The qf shall bond all neutrals of the qf's system to the Company's neutral, and shall install a separate driven ground with a resistance value which shall be determined by the Company and bond this ground to the qf's system neutral.

d. **Exceptions** A qf's generator having a capacity rating that can:

- i. Produce power in excess of one half of the minimum Company customer requirements of the interconnected distribution or transmission circuit; or
- ii. produce power flows approaching or exceeding the thermal capacity of the connected Company distribution or transmission lines or transformers; or
- iii. adversely affect the operation of the Company or other Company customer's voltage, frequency or overcurrent control and protection devices; or
- iv. adversely affect the quality of service to other Company customers; or
- v. interconnect at voltage levels greater than distribution voltages, will require more complex interconnection facilities as deemed necessary by the Company.

8. **Quality of Service:** The qf's generated electricity shall meet the following minimum guidelines:

- a. **Frequency:** The governor control on the prime mover shall be capable of maintaining the generator output frequency within limits for loads from no-load up to rated output. The limits for frequency shall be 60 hertz (cycles per second), plus or minus an instantaneous variation of less than 1%.
- b. **Voltage:** The regulator control shall be capable of maintaining the generator output voltage within limits for loads from no-load up to rated output. The limits for voltage shall be the nominal operating voltage level, plus or minus 5%.

Continued to Sheet No. 8.740

**ISSUED BY:** J. B. Ramil, President

**DATE EFFECTIVE:** March 30, 1999

**TAMPA ELECTRIC COMPANY**

**ORIGINAL SHEET NO. 8.740**

Continued from Sheet No. 8.735

c. **Harmonics:** The output sine wave distortion shall be deemed acceptable when it does not have a higher content (root mean square) of harmonics than the Company's normal harmonic content at the interconnection point.

d. **Power Factor:** The qf's generation system shall be designed, operated and controlled to provide reactive power requirements from 0.95 lagging to 0.95 leading power factor at the point of interconnection with Company. Induction generators shall have static capacitors that provide at least 95% of the magnetizing current requirements of the induction generator field. (Capacitors shall not be so large as to permit self-excitation of the qf's generator field).

e. **DC Generators:** Direct current generators may be operated in parallel with the Company's system through a synchronous inverter. The inverter must meet all criteria in these rules.

9. **Metering:** The actual metering equipment required, its voltage rating, number of phases, size, current transformers, potential transformers, number of inputs and associated memory is dependent on the type, size and location of the electric service provided. In situations where power may flow both in and out of the qf's system, power flowing into the qf's system will be measured separately from power flowing out of the qf's system.

The Company will provide, at no additional cost to the qf, the metering equipment necessary to measure capacity and energy deliveries to the qf. The Company will provide, at the qf's expense, the necessary additional metering equipment to measure capacity and energy deliveries by the qf to the Company.

10. **Cost Responsibility:** The qf is required to bear all costs associated with the change-out, upgrading or addition of protective devices, transformers,

Continued to Sheet No. 8.745

**ISSUED BY: J. B. Ramil, President**

**DATE EFFECTIVE: March 30, 1999**



**TAMPA ELECTRIC COMPANY**

**ORIGINAL SHEET NO. 8.745**

Continued from Sheet No. 8.740

lines, services, meters, switches, and associated equipment and devices beyond that which would be required to provide normal service to the qf if the qf were a non-generating customer. These costs shall be paid by the qf to the Company for all material and labor that is required. Prior to any work being done by the Company, the Company shall supply the qf with a written cost estimate of all its required materials and labor and an estimate of the date by which construction of the interconnection will be completed. This estimate shall be provided to the qf within 60 days after the qf provides the Company with its final electrical plans. The Company shall also provide project timing and feasibility information to the qf.

11. The Company shall submit, to the FPSC, a standard agreement for the interconnection by qfs as part of their Standard Offer contract or contracts required by FPSC Rule 25-17.0832(3), F.A.C.

**ISSUED BY: J. B. Ramil, President**

**DATE EFFECTIVE: March 30, 1999**

# Item 12

State of Florida



## Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD  
TALLAHASSEE, FLORIDA 32399-0850

**-M-E-M-O-R-A-N-D-U-M-**

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**DATE:** May 23, 2018

**TO:** Office of Commission Clerk (Stauffer)

**FROM:** Division of Engineering (Wooten, Ellis, Wright) *EW*  
Division of Economics (Higgins) *EH*  
Office of the General Counsel (Dziechciarz) *RD Cm*

**RE:** Docket No. 20180083-EQ – Petition for approval of renewable energy tariff and standard offer contract, by Florida Power & Light Company.

**AGENDA:** 06/05/18 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

**COMMISSIONERS ASSIGNED:** All Commissioners

**PREHEARING OFFICER:** Administrative

**CRITICAL DATES:** None

**SPECIAL INSTRUCTIONS:** Staff recommends the Commission simultaneously consider Docket Nos. 20180073-EQ, 20180081-EQ, 20180082-EQ, 20180083-EQ and 20180091-EQ

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### Case Background

Section 366.91(3), Florida Statutes (F.S.), requires that each investor-owned utility (IOU) continuously offer to purchase capacity and energy from renewable energy generators and small qualifying facilities. Florida Public Service Commission (Commission) Rules 25-17.200 through 25-17.310, Florida Administrative Code (F.A.C.), implement the statute and require each IOU to file with the Commission by April 1 of each year, a standard offer contract based on the next avoidable fossil fueled generating unit of each technology type identified in the Utility's current Ten-Year Site Plan. On April 2, 2018, Florida Power & Light Company (FPL) filed a petition for approval of its revised standard offer contract and renewable energy tariff based on its 2018 Ten-

Year Site Plan<sup>1</sup>. On April 20, 2018, FPL filed an amended petition for approval of the revised standard offer contract and revised accompanying rate schedule QS-2. Revisions made to the tariff sheets are consistent with the updated avoided unit and an avoided unit selection option. Revisions include updates to dates and payment information which reflect the current economic and financial assumptions for the avoided unit and purchased power costs.

The Commission has jurisdiction over this standard offer contract pursuant to Sections 366.04 through 366.06 and 366.91, F.S.

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<sup>1</sup>April 2, 2018, was the first business day following the Sunday, April 1 deadline for standard offer contract filings.



## Discussion of Issues

**Issue 1:** Should the Commission approve the amended renewable energy tariff and standard offer contract filed by Florida Power & Light Company?

**Recommendation:** Yes. The provisions of FPL's revised renewable energy tariff and standard offer contract conform to the requirements of Rules 25-17.200 through 25-17.310, F.A.C. FPL's 2018 Ten-Year Site Plan does not include any avoidable fossil fueled generating units, but has a projected planned purchase of 325 megawatt (MW) in 2019 that is FPL's next planned purchase that could be avoided or deferred. FPL has also identified its next avoidable unit which is a 1,778 MW natural gas-fired combined cycle unit at a greenfield site with an expected in-service date of June 1, 2028. FPL's revised standard offer contract provides flexibility in the arrangement for payments so that a developer of renewable generation may select the payment stream best suited to its financial needs. Staff recommends that FPL's revised renewable energy tariff and standard offer contract be approved as filed. (Wooten, Wright, Higgins)

**Staff Analysis:** Rule 25-17.250, F.A.C., requires that FPL, an IOU, continuously make available a standard offer contract for the purchase of firm capacity and energy from renewable generating facilities (RF) and small qualifying facilities (QF) with design capacities of 100 kilowatts (kW) or less. Pursuant to Rules 25-17.250(1) and (3), F.A.C., the standard offer contract must provide a term of at least 10-years, and the payment terms must be based on the Utility's next avoidable fossil-fueled generating unit identified in its most recent Ten-Year Site Plan or, if no avoided unit is identified, its next avoidable planned purchase. FPL's 2018 Ten-Year Site Plan does not include any avoidable fossil fueled generating units but has a projected planned purchase of 325 MW in 2019 that would be FPL's next planned purchase that could be avoided or deferred. However, in an effort to encourage renewable generation, FPL has identified its next avoidable unit as a 1,778 MW natural gas-fired combined cycle unit at a greenfield site with an expected in-service date of June 1, 2028. Both the avoided unit and avoided planned purchase options are available for FPL's revised standard offer contract.

Under FPL's standard offer contract, the RF/QF operator commits to certain minimum performance requirements based on the identified avoided unit, such as being operational and delivering an agreed upon amount of capacity by the in-service date of the avoided unit, and thereby becomes eligible for capacity payments in addition to payments received for energy. The standard offer contract may also serve as a starting point for negotiation of contract terms by providing payment information to an RF/QF operator, in a situation where one or both parties desire particular contract terms other than those established in the standard offer.

In order to promote renewable generation, the Commission requires the IOU to offer multiple options for capacity payments, including the options to receive early or levelized payments. If the RF/QF operator elects to receive capacity payments under the normal or levelized contract options, it will receive as-available energy payments only until the in-service date of the avoided unit (in this case June 1, 2028), and thereafter begin receiving capacity payments in addition to energy payments. If either the early or levelized option is selected, then the operator will begin receiving capacity payments earlier than the in-service date of the avoided unit. However, payments made under the early capacity payment options tend to be lower in the later years of



the contract term because the net present value (NPV) of the total payments must remain equal for all contract payment options.

Table 1 below, contains estimates of the annual payments for each payment option available under the revised standard offer contract to an operator choosing the 2028 avoided unit option. This is available to an operator with a 50 MW facility operating at a capacity factor of 94 percent that meets the minimum requirement specified in the contract to qualify for full capacity payments. Normal and levelized capacity payments begin in 2028, reflecting the projected in-service date of the avoided unit (June 1, 2028).

**Table 1 - Estimated Annual Payments to a 50 MW Renewable Facility  
94 Percent Capacity Factor**

Year	Energy Payment \$(000)	Capacity Payment (By Type)			
		Normal \$(000)	Levelized \$(000)	Early \$(000)	Early Levelized \$(000)
2019	10,808	-	-	-	-
2020	9,513	-	-	-	-
2021	7,836	-	-	-	-
2022	8,501	-	-	-	-
2023	9,237	-	-	-	-
2024	9,730	-	-	2,445	2,825
2025	10,236	-	-	2,506	2,825
2026	11,235	-	-	2,569	2,825
2027	13,098	-	-	2,633	2,825
2028	12,312	4,111	4,581	2,699	2,825
2029	12,446	4,214	4,581	2,766	2,825
2030	12,992	4,319	4,581	2,835	2,825
2031	13,453	4,427	4,581	2,906	2,825
2032	13,930	4,538	4,581	2,978	2,825
2033	14,132	4,652	4,581	3,053	2,825
2034	14,483	4,768	4,581	3,129	2,825
2035	14,806	4,887	4,581	3,208	2,825
2036	15,178	5,009	4,581	3,288	2,825
2037	15,475	5,134	4,581	3,370	2,825
2038	15,820	5,263	4,581	3,454	2,825
<b>Total</b>	256,132	51,323	50,391	43,839	42,373
<b>NPV (2019\$)</b>	115,228	15,671	15,671	15,671	15,671

Source: FPL's Supplemental Response to Staff's First Data Request.<sup>2</sup>

Table 2 below, contains estimates of the annual payments for each payment option available under the revised standard offer contract if an operator chooses the avoided planned power purchase contract. This contract is available to an operator with a 50 MW facility operating at a capacity factor of 94 percent that meets the minimum requirement specified in the contract to qualify for full capacity payments. Normal and levelized capacity payments begin in 2019, reflecting the projected purchase date of the avoided purchase (June 1, 2019).

<sup>2</sup>Document No. 03838-2018, filed May 23, 2018, in Docket No. 20180083-EQ.

**Table 2 - Estimated Annual Payments to a 50 MW Renewable Facility  
94 Percent Capacity Factor**

Year	Energy Payment \$(000)	Capacity Payment (By Type)			
		Normal	Levelized	Early	Early Levelized
		\$(000)	\$(000)	\$(000)	\$(000)
2019	10,808	1,200	111.4	585.0	101.3
2020	9,513	-	111.4	-	101.3
2021	7,836	-	111.4	-	101.3
2022	8,501	-	111.4	-	101.3
2023	9,237	-	111.4	-	101.3
2024	9,730	-	111.4	-	101.3
2025	10,236	-	111.4	-	101.3
2026	11,235	-	111.4	-	101.3
2027	13,097	-	111.4	-	101.3
2028	12,948	-	111.4	-	101.3
2029	12,831	-	111.4	-	101.3
2030	13,175	-	111.4	-	101.3
2031	16,168	-	111.4	-	101.3
2032	14,297	-	111.4	-	101.3
2033	14,224	-	111.4	-	101.3
2034	15,670	-	111.4	-	101.3
2035	15,904	-	111.4	-	101.3
2036	15,985	-	111.4	-	101.3
2037	16,901	-	111.4	-	101.3
2038	17,123	-	111.4	-	101.3
<b>Total</b>	266,330	1,200	2,228	585.0	2,025
<b>NPV (2019\$)</b>	118,240	1,033	1,033	1,033	1,033

Source: FPL's Supplemental Response to Staff's First Data Request.<sup>3</sup>

FPL's revised renewable energy tariff and standard offer contract, in type-and-strike format, are included as Attachment A to this recommendation. All of the changes made to the tariff sheets are consistent with the updated avoided unit and an avoided unit selection option. Revisions include updates to dates and payment information which reflect the current economic and financial assumptions for the avoided unit and purchased power costs.

Additional language was introduced in Revised Sheet 9.033 and Original Sheet 9.033.1 that addressed "Capacity Delivery Date" and "Delivery Date Conditions" that must be satisfied by the QF. In response to a staff data request, FPL explained the clarifying language is significant and essential for FPL because the Capacity Delivery Date is the date when the QF is required to deliver to FPL, and is also the date when FPL is required to receive and pay the Committed

<sup>3</sup>Document No. 03838-2018, filed May 23, 2018, in Docket No. 20180083-EQ.



Capacity amount. FPL further clarified that the additional Delivery Date Conditions are consistent with sound commercial practice and will ensure that the QF will generate and deliver to FPL electric energy safely and reliably for the Term of the Standard Offer Contract.

### **Conclusion**

The provisions of FPL's revised renewable energy tariff and standard offer contract conform to the requirements of Rules 25-17.200 through 25-17.310, F.A.C. FPL's 2018 Ten-Year Site Plan does not include any avoidable fossil fueled generating units, but has a projected planned purchase of 325 megawatt (MW) in 2019 that is FPL's next planned purchase that could be avoided or deferred. FPL has also identified its next avoidable unit as a 1,778 MW natural gas-fired combined cycle unit at a greenfield site with an expected in-service date of June 1, 2028. FPL's revised standard offer contract provides flexibility in the arrangement for payments so that a developer of renewable generation may select the payment stream best suited to its financial needs. Staff recommends that FPL's revised renewable energy tariff and standard offer contract be approved as filed.

**Issue 2:** Should this docket be closed?

**Recommendation:** Yes. This docket should be closed upon issuance of a consummating order, unless a person whose substantial interests are affected by the Commission's decision files a protest within 21 days of the issuance of the Commission's Proposed Agency Action Order. Potential signatories should be aware that, if a timely protest is filed, FPL's standard offer contract may subsequently be revised. (Dziechciarz)

**Staff Analysis:** This docket should be closed upon the issuance of a consummating order, unless a person whose substantial interests are affected by the Commission's decision files a protest within 21 days of the issuance of the Commission's Proposed Agency Action Order. Potential signatories should be aware that, if a timely protest is filed, FPL's standard offer contract may subsequently be revised.



FLORIDA POWER & LIGHT COMPANY

~~Tenth~~Eleventh Revised Sheet No. 9.030  
Cancels ~~Ninth~~Tenth Sheet No. 9.030

**STANDARD OFFER CONTRACT FOR THE PURCHASE OF  
CAPACITY AND ENERGY FROM A RENEWABLE ENERGY FACILITY OR A QUALIFYING  
FACILITY WITH A DESIGN CAPACITY OF 100 KW OR LESS (2019 PLANNED POWER PURCHASE  
OR 2028 AVOIDED UNIT)**

THIS STANDARD OFFER CONTRACT (the "Contract") is made and entered this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by and between \_\_\_\_\_ (herein after "Qualified Seller" or "QS") a corporation/limited liability company organized and existing under the laws of the State of \_\_\_\_\_ and owner of a Renewable Energy Facility as defined in section 25-17.210 (1) F.A.C. or a Qualifying Facility with a design capacity of 100 KW or less as defined in section 25-17.250, and Florida Power & Light Company (hereinafter "FPL") a corporation organized and existing under the laws of the State of Florida. The QS and FPL shall be jointly identified herein as the "Parties". This Contract contains five Appendices; Appendix A, QS-2 Standard Rate for Purchase of Capacity and Energy; Appendix B, Pay for Performance Provisions; Appendix C, Termination Fee; Appendix D, Detailed Project Information and Appendix E, contract options to be selected by QS.

**WITNESSETH:**

WHEREAS, the QS desires to sell and deliver, and FPL desires to purchase and receive, firm capacity and energy to be generated by the QS consistent with the terms of this Contract, Section 366.91, Florida Statutes, and/or Florida Public Service Commission ("FPSC") Rules 25-17.082 through 25-17.091, F.A.C. and FPSC Rules 25-17.200 through 25.17.310.F.A.C.

WHEREAS, the QS has signed an interconnection agreement with FPL (the "Interconnection Agreement"), or it has entered into valid and enforceable interconnection/transmission service agreement(s) with the utility (or those utilities) whose transmission facilities are necessary for delivering the firm capacity and energy to FPL (the "Wheeling Agreement(s)");

WHEREAS, the FPSC has approved the form of this Standard Offer Contract for the Purchase of Firm Capacity and Energy from a Renewable Energy Facility or a Qualifying Facility with a design capacity of 100 KW or less; and

WHEREAS, the Facility is capable of delivering firm capacity and energy to FPL for the term of this Contract in a manner consistent with the provisions of this Contract; and

WHEREAS, Section 366.91(3), Florida Statutes, provides that the "prudent and reasonable costs associated with a QS energy contract shall be recovered from the ratepayers of the contracting utility, without differentiating among customer classes, through the appropriate cost-recovery clause mechanism" administered by the FPSC.

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

(Continued on Sheet No. 9.031)

Issued by: S. E. Romig/Tiffany Cohen, Director, Rates and Tariffs  
Effective: February 19, 2018

FLORIDA POWER & LIGHT COMPANY

Second Revised Sheet No. 9.031  
Cancels First Sheet No. 9.031

(Continued from Sheet No. 9.030)

1. QS Facility

The QS contemplates, installing operating and maintaining a \_\_\_\_\_ KVA \_\_\_\_\_ generating facility located at \_\_\_\_\_ (hereinafter called the "Facility"). The Facility is designed to produce a maximum of \_\_\_\_\_ kilowatts ("KW") of electric power at an 85% lagging to 85% leading power factor. The Facility's location and generation capabilities are as described in the table below.

TECHNOLOGY AND GENERATOR CAPABILITIES	
Location: Specific legal description (e.g., metes and bounds or other legal description with street address required)	City: County:
Generator Type (Induction or Synchronous)	
Type of Facility (Hydrogen produced from sources other than fossil fuels, biomass as defined in Section 25-17.210 (2) F.A.C., solar energy, geothermal energy, wind energy, ocean energy, hydroelectric power, waste heat from sulfuric acid manufacturing operations: or <100KW cogenerator)	
Technology	
Fuel Type and Source	
Generator Rating (KVA)	
Maximum Capability (KW)	
Minimum Load	
Peaking Capability	
Net Output (KW)	
Power Factor (%)	
Operating Voltage (kV)	
Peak Internal Load KW	

The following sections (a) through (c) are applicable to Renewable Energy Facilities ("REFs") and section (e) is only applicable to Qualifying Facilities with a design capacity of 100 KW or less:

- (a) If the QS is a REF, the QS represents and warrants that (i) the sole source(s) of fuel or power used by the Facility to produce energy for sale to FPL during the term of this Contract shall be such sources as are defined in and provided for pursuant to Sections 366.91(2) (a) and (b), Florida Statutes, and FPSC Rules 25-17.210(1) and (2), F.A.C.; (ii) Fossil fuels shall be limited to the minimum quantities necessary for start-up, shut-down and for operating stability at minimum load; and (iii) the REF is capable of generating the amount of capacity pursuant to Section 5 of this Agreement without the use of fossil fuels.
- (b) The Parties agree and acknowledge that if the QS is a REF, the QS will not charge for, and FPL shall have no obligation to pay for, any electrical energy produced by the Facility from a source of fuel or power except as specifically provided for in paragraph 1(a) above.

(Continued on Sheet No. 9.032)

Issued by: S. E. Romig, Director, Rates and Tariffs  
Effective: July 13, 2017

FLORIDA POWER & LIGHT COMPANY

~~Twelfth~~<sup>Thirteenth</sup> Revised Sheet No. 9.032  
Cancels ~~Eleventh~~<sup>Twelfth</sup> Revised Sheet No. 9.032

(Continued from Sheet No. 9.031)

- (c) If the QS is a REF, the QS shall, on an annual basis and within thirty (30) days after the anniversary date of this Contract and on an annual basis thereafter for the term of this Contract, deliver to FPL a report certified by an officer of the QS: (i) stating the type and amount of each source of fuel or power used by the QS to produce energy during the twelve month period prior to the anniversary date (the "Contract Year"); and (ii) verifying that one hundred percent (100%) of all energy sold by the QS to FPL during the Contract Year complies with Sections 1(a) and (b) of this Contract.
- (d) If the QS is a REF, the QS represents and warrants that the Facility meets the renewable energy requirements of Section 366.91(2)(a) and (b), Florida Statutes, and FPSC Rules 25-17.210(1) and (2)-, F.A.C., and that the QS shall continue to meet such requirements throughout the term of this Contract. FPL shall have the right at all times to inspect the Facility and to examine any books, records, or other documents of the QS that FPL deems necessary to verify that the Facility meets such requirements.
- (e) The Facility (i) has been certified or has self-certified as a "qualifying facility" pursuant to the Regulations of the Federal Energy Regulatory Commission ("FERC"), or (ii) has been certified by the FPSC as a "qualifying facility" pursuant to Rule 25-17.080(1). A QS that is a qualifying facility with a design capacity of less than 100 KW shall maintain the "qualifying status" of the Facility throughout the term of this Contract. FPL shall have the right at all times to inspect the Facility and to examine any books and records or other documents of the Facility that FPL deems necessary to verify the Facility's qualifying status. On or before March 31 of each year during the term of this Contract, the QS shall provide to FPL a certificate signed by an officer of the QS certifying that the Facility has continuously maintained qualifying status.

## 2. Term of Contract

Except as otherwise provided herein, this Contract shall become effective immediately upon its execution by the Parties (the "Effective Date") and shall have the termination date stated in Appendix E, unless terminated earlier in accordance with the provisions hereof. Notwithstanding the foregoing, if the Capacity Delivery Date (as defined in Section 5.5) of the Facility is not accomplished by the ~~QS before June 1, 2028~~<sup>in-service date of the avoided unit</sup>, or such later date as may be permitted by FPL pursuant to Section 5 of this Contract, FPL will be permitted to terminate this Contract consistent with the terms herein without further obligations, duties or liability to the QS.

## 3. Minimum Specifications

Following are the minimum specifications pertaining to this Contract:

- 1. The avoided unit ("Avoided Unit") ~~options~~<sup>is</sup> on which this Contract is based ~~is~~<sup>are</sup> detailed in Appendix A, ~~Tariff Sheet Nos. 10.311 through 10.311.3.~~
- 2. This offer shall expire on April 1, ~~2048~~<sup>2019</sup>.
- 3. The date by which firm capacity and energy deliveries from the QS to FPL shall commence is the in-service date of the Avoided Unit (or such later date as may be permitted by FPL pursuant to Section 5 of this contract) unless the QS chooses a capacity payment option that provides for early capacity payments pursuant to the terms of this Contract.
- 4. The period of time over which firm capacity and energy shall be delivered from the QS to FPL is as specified in Appendix E; provided, such period shall be no less than a minimum of ten (10) years after the in-service date of the Avoided Unit.
- 5. The following are the minimum performance standards for the delivery of firm capacity and energy by the QS to qualify for full capacity payments under this Contract:

	On Peak *	All Hours
Availability	94.0%	94.0%

\* QS Performance and On Peak hours shall be as measured and/or described in FPL's Rate Schedule QS-2 attached hereto as Appendix A

(Continued on Sheet No. 9.032.1)

Issued by: ~~S. E. Romig~~<sup>Tiffany Cohen</sup>, Director, Rates and Tariffs  
Effective: ~~February 19, 2018~~



FLORIDA POWER & LIGHT COMPANY

First Revised Sheet No. 9.032.1  
Cancels Original Sheet No. 9.032.1

(Continued from Sheet No. 9.032)

3.2 QS, at no cost to FPL, shall be responsible to:

3.2.1 Design, construct, and maintain the Facility in accordance with this Contract, applicable law, regulatory, and governmental approvals, any requirements of warranty agreements or similar agreements, prudent industry practice, insurance policies, and the Interconnection Agreement or Wheeling Agreement.

3.2.2 Perform all studies, pay all fees, obtain all necessary approvals and execute all necessary agreements (including the Interconnection Agreement or the Wheeling Agreement(s)) in order to schedule and deliver the firm capacity and energy to FPL.

3.2.3 Obtain and maintain all permits, certifications, licenses, consents or approvals of any governmental or regulatory authority necessary for the construction, operation, and maintenance of the Facility (the "Permits"). QS shall keep FPL reasonably informed as to the status of its permitting efforts and shall promptly inform FPL of any Permits it is unable to obtain, that are delayed, limited, suspended, terminated, or otherwise constrained in a way that could limit, reduce, interfere with, or preclude QS's ability to perform its obligations under this Contract (including a statement of whether and to what extent this circumstance may limit or preclude QS's ability to perform under this Contract.)

3.2.4 Demonstrate to FPL's reasonable satisfaction that QS has established Site Control, an agreement for the ownership or lease of the Facility's site, for the Term of the Contract.

3.2.5 Complete all environmental impact studies and comply with applicable environmental laws necessary for the construction, operation, and maintenance of the Facility.

3.2.6 At FPL's request, provide to FPL electrical specifications and design drawings pertaining to the Facility for FPL's review prior to finalizing design of the Facility and before beginning construction work based on such specifications and drawings, provided FPL's review of such specifications and design shall not be construed as endorsing the specification, and design thereof, or as any express or implied warranties including performance, safety, durability or reliability of the Facility. QS shall provide to FPL reasonable advance notice of any changes in the Facility and provide to FPL specifications and design drawings of any such changes.

3.2.7 Within fifteen (15) days after the close of each month from the first month following the Effective Date until the Capacity Delivery Date, provide to FPL a monthly progress report (in a form reasonably satisfactory to FPL) and agree to regularly scheduled meetings between representatives of QS and FPL to review such monthly reports and discuss QS's construction progress. The Monthly Progress Report shall indicate whether QS is on target to meet the Capacity Delivery Date. If, for any reason, FPL has reason to believe that QS may fail to achieve the Capacity Delivery Date, then, upon FPL's request, QS shall submit to FPL, within ten (10) business days of such request, a remedial action plan ("Remedial Action Plan") that sets forth a detailed description of QS's proposed course of action to promptly achieve the Capacity Delivery Date. Delivery of a Remedial Action Plan does not relieve QS of its obligation to meet the Capacity Delivery Date.

3.3 FPL shall have the right, but not the obligation, to:

3.3.1 Inspect during business hours upon reasonable notice, or obtain copies of all Permits held by QS.

3.3.2 Consistent with Section 3.2.6, notify QS in writing of the results of the review within thirty (30) days of FPL's receipt of all specifications for the Facility, including a description of any flaws perceived by FPL in the design.

3.3.3 Inspect the Facility's construction site or on-site QS data and information pertaining to the Facility during business hours upon reasonable notice.

(Continued on Sheet No. 9.033)

Issued by: S. E. Romig, Director, Rates and Tariffs  
Effective: September 13, 2016

FLORIDA POWER & LIGHT COMPANY

~~Eighth~~<sup>Ninth</sup> Revised Sheet No. 9.033  
Cancels ~~Seventh~~<sup>Eighth</sup> Sheet No. 9.033

(Continued from Sheet No. 9.032.1)

4. Sale of Energy and Capacity by the QS

4.1 Consistent with the terms hereof, the QS shall sell and deliver to FPL and FPL shall purchase and receive from the QS at the Delivery Point (defined below) all of the energy and firm capacity generated by the Facility. FPL shall have the sole and exclusive right to purchase all energy and capacity produced by the Facility. The purchase and sale of energy and firm capacity 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 QS to sell more energy and firm capacity than the Facility's net output. The billing methodology may be changed at the option of the QS, subject to the provisions of FPL Rate Schedule QS-2. For purposes of this Contract, Delivery Point shall be defined as either: (a) the point of interconnection between FPL's system and the transmission system of the final utility transmitting energy and firm capacity from the Facility to the FPL system, as specifically described in the applicable Wheeling Agreement, or (b) the point of interconnection between the Facility and FPL's transmission system, as specifically described in the Interconnection Agreement.

4.2 The QS shall not rely on interruptible standby service for the start up requirements (initial or otherwise) of the Facility.

4.3 The QS shall be responsible for all costs, charges and penalties associated with development and operation of the Facility.

4.4 The QS shall be responsible for all interconnection, electric losses, transmission and ancillary service arrangements and costs required to deliver, on a firm basis, the firm capacity and energy from the Facility to the Delivery Point.

5. Committed Capacity/Capacity Delivery Date

5.1 The QS commits to sell and deliver firm capacity to FPL at the Delivery Point, the amount of which shall be determined in accordance with this Section 5 (the "Committed Capacity"). Subject to Section 5.3 the Committed Capacity shall be \_\_\_\_\_ KW, delivery date no later than the in-service date of the Avoided Unit or as otherwise specified in Appendix E (the "Guaranteed Capacity Delivery Date").

5.2 Testing of the capacity of the Facility (each such test, a "Committed Capacity Test") shall be performed in accordance with the procedures set forth in Section 6. The Demonstration Period (defined herein) for the first Committed Capacity Test shall commence no earlier than six (6) months prior to the Capacity Delivery Date and testing must be completed by 11:59 p.m. on the date prior to the Guaranteed Delivery Date. The first Committed Capacity Test shall be deemed successfully completed when the QS demonstrates to FPL's satisfaction that the Facility can make available capacity of at least one hundred percent (100%) of the Committed Capacity set forth in Section 5.1. Subject to Section 6.1, the QS may schedule and perform up to three (3) Committed Capacity Tests to satisfy the capacity requirements of the Contract.

5.3 FPL shall have the right to require the QS, by notice no less than ten (10) business days prior to such proposed test, to validate the Committed Capacity of the Facility by means of subsequent Committed Capacity Tests as follows: (a) once per each Summer period and once per each Winter period at FPL's sole discretion, (b) at any time the QS is unable to comply with any material obligation under this Contract for a period of thirty (30) days or more in the aggregate as a consequence of an event of Force Majeure, and (c) at any time the QS fails in three consecutive months to achieve an Annual Capacity Billing Factor, as defined in Appendix B (the "ACBF"), equal to or greater than 70%. The results of any such test shall be provided to FPL within seven (7) 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 deemed as the lower of the tested capacity or the Committed Capacity as set forth in Section 5.1.

5.4 Notwithstanding anything to the contrary herein, the Committed Capacity shall not exceed the amount set forth in Section 5.1 without the prior written consent of FPL, such consent not unreasonably withheld.

5.5 The "Capacity Delivery Date" shall be defined as the first calendar day immediately ~~following~~<sup>after</sup> the date ~~of~~<sup>the</sup> ~~last to occur~~ of (a) the Facility's successful completion of the first Committed Capacity Test but no earlier than the commencement date for deliveries of firm capacity and energy (as such is specified in Appendix E) ~~and (b) the satisfaction by QS of the following Delivery Date Conditions (defined below).~~

~~5.6 The QS shall be entitled to receive capacity payments beginning on the Capacity Delivery Date, provided, the Capacity Delivery Date occurs on or before the in-service date of the Avoided Unit (or such later date permitted by FPL pursuant to the following sentence). If the Capacity Delivery Date does not occur on or before the Guaranteed Capacity Delivery Date, FPL shall be entitled to the Completion/Performance Security (as set forth in Section 9) in full, and in addition, has the right but not the obligation to, allow the QS up to an additional five (5) months to achieve the Capacity Delivery Date. If the QS fails to achieve the Capacity Delivery Date either by (a) the Guaranteed Delivery Date or (b) such later date as permitted by FPL, FPL shall have no obligation to make any capacity payments under this Contract and FPL will be permitted to terminate this Contract, consistent with the terms herein, without further obligations, duties or liability to the QS.~~

(Continued on Sheet No. 9.034.31)

Issued by: ~~S. E. Romig~~<sup>Tiffany Cohen</sup>, Director, Rates and Tariffs  
Effective: ~~September 13, 2016~~



FLORIDA POWER & LIGHT COMPANY

Original Sheet No. 9.033.1

(Continue from Sheet No. 9.033)

5.5.1 A certificate addressed to FPL from a Licensed Professional Engineer (reasonably acceptable to FPL in all respects) stating: (a) the nameplate capacity rating of the Facility at the anticipated time of commercial operation, which must be at least 94% of the Expected Nameplate Capacity Rating; (b) that the Facility is able to generate electric energy reliably in amounts expected by this Agreement and in accordance with all other terms and conditions hereof; (c) that Start-Up Testing of the Facility has been completed; and (d) that, pursuant to Section 8.4, all system protection and control and Automatic Generation Control devices are installed and operational.

5.5.2 A certificate addressed to FPL from a Licensed Professional Engineer (reasonably acceptable to FPL in all respects) stating, in conformance with the requirements of the Interconnection Agreement, that: (a) all required interconnection facilities have been constructed; (b) all required interconnection tests have been completed; and (c) the Facility is physically interconnected with the System in conformance with the Interconnection Agreement and able to deliver energy consistent with the terms of this Agreement.

5.5.3 A certificate addressed from a Licensed Professional Engineer (reasonably acceptable to FPL in all respects) stating that QS has obtained or entered into all permits and agreements with respect to the Facility necessary for construction, ownership, operation, and maintenance of the Facility (the "Required Agreements"). QS must provide copies of any or all Required Agreements requested by FPL.

5.5.4 An opinion from a law firm or attorney, registered or licensed in the State of Florida (reasonably acceptable to FPL in all respects), stating, after all appropriate and reasonable inquiry, that: (a) QS has obtained or entered into all Required Agreements; (b) neither QS nor the Facility is in violation of or subject to any liability under any applicable law; and (c) QS has duly filed and had recorded all of the agreements, documents, instruments, mortgages, deeds of trust, and other writings described in Section 9.7.

5.5.5 FPL has received the Completion/Performance Security ((a) through (e), the "Commercial Operation Conditions").

FPL shall have ten (10) Business Days after receipt either to confirm to QS that all of the Delivery Date Conditions have been satisfied or have occurred, or to state with specificity what FPL reasonably believes has not been satisfied.

5.6 The QS shall be entitled to receive capacity payments beginning on the Capacity Delivery Date, provided, the Capacity Delivery Date occurs on or before the in-service date of the Avoided Unit (or such later date permitted by FPL pursuant to the following sentence). If the Capacity Delivery Date does not occur on or before the Guaranteed Capacity Delivery Date, FPL shall be entitled to the Completion/Performance Security (as set forth in Section 9) in full, and in addition, has the right but not the obligation to allow the QS up to an additional five (5) months to achieve the Capacity Delivery Date. If the QS fails to achieve the Capacity Delivery Date either by (a) the Guaranteed Delivery Date or b) such later date as permitted by FPL, FPL shall have no obligation to make any capacity payments under this Contract and FPL will be permitted to terminate this Contract, consistent with the terms herein, without further obligations, duties or liability to the QS.

(Continue on Sheet No. 9.034)

Issued by: Tiffany Cohen, Director, Rates and Tariffs  
Effective:

FLORIDA POWER & LIGHT COMPANY

Second Revised Sheet No. 9.034  
Cancels First Sheet No. 9.034

(Continued from Sheet No. 9.033)

6. Testing Procedures

6.1 The Committed Capacity Test must be completed successfully within a sixty-hour period (the "Demonstration Period"), which period, including the approximate start time of the Committed Capacity Test, shall be selected and scheduled by the QS by means of a written notice to FPL delivered at least thirty (30) days prior to the start of such period. The provisions of the foregoing sentence shall not apply to any Committed Capacity Test required by FPL under any of the provisions of this Contract. FPL shall have the right to be present onsite to monitor any Committed Capacity Test required or permitted under this Contract.

6.2 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. If the QS is a REF the Committed Capacity Test shall be conducted utilizing as the sole fuel source fuels or energy sources included in the definition in Section 366.91, Florida Statutes. The Committed Capacity Test Period shall commence at the time designated by the QS pursuant to Section 6.1 or at such other time requested by FPL pursuant to Section 5.3; provided, however, that the Committed Capacity Test Period may commence earlier than such time in the event that FPL is notified of, and consents to, such earlier time.

6.3 For the avoidance of doubt, 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. Further, the QS shall affect deliveries of any quantity and quality of contracted cogenerated steam to the steam host during the Committed Capacity Test Period.

6.4 The capacity of the Facility shall be the average net capacity (generator output minus auxiliary) measured over the Committed Capacity Test Period.

6.5 The Committed Capacity Test shall be performed according to prudent industry testing procedures satisfactory to FPL for the appropriate technology of the QS.

6.6 Except as otherwise provided herein, results of any Committed Capacity Test shall be submitted to FPL by the QS within seven (7) days of the conclusion of the Committed Capacity Test.

7. Payment for Electricity Produced by the Facility

7.1 Energy

FPL agrees to pay the QS for energy produced by the Facility and delivered to the Delivery Point in accordance with the rates and procedures contained in FPL's approved Rate Schedule QS-2, attached hereto as Appendix A, as it may be amended from time to time and pursuant to the election of energy payment options as specified in Appendix E. The Parties agree that this Contract shall be subject to all of the provisions contained in Rate Schedule QS-2 as approved and on file with the FPSC.

7.2 Firm Capacity

FPL agrees to pay the QS for the firm capacity described in Section 5 in accordance with the rates and procedures contained in Rate Schedule QS-2, attached hereto as Appendix A, as it may be amended and approved from time to time by the FPSC, and pursuant to the election of a capacity payment option as specified in Appendix E. The QS understands and agrees that capacity payments will be made under the early capacity payment options only if the QS has achieved the Capacity Delivery Date and is delivering firm capacity and energy to FPL. Once elected by the QS, the capacity payment option cannot be changed during the term of this Contract.

7.3 Payments

Payments due the QS will be made monthly and normally by the twentieth business day following the end of the billing period. A statement of the kilowatt-hours sold by the QS and the applicable avoided energy rate at which payments are being made shall accompany the payment to the QS.

(Continued on Sheet No. 9.035)

Issued by: S. E. Romig, Director, Rates and Tariffs  
Effective: September 13, 2016



FLORIDA POWER & LIGHT COMPANY

Second Revised Sheet No. 9.035  
Cancels First Sheet No. 9.035

(Continued from Sheet No. 9.034)

8. Electricity Production and Plant Maintenance Schedule

8.1 During the term of this Contract, no later than sixty (60) days prior to the Capacity Delivery Date and prior to April 1 of each calendar year thereafter, the QS shall submit to FPL in writing a detailed plan of: (a) the amount of firm capacity and energy to be generated by the Facility and delivered to the Delivery Point for each month of the following calendar year, and (b) the time, duration and magnitude of any scheduled maintenance period(s) and any anticipated reductions in capacity.

8.2 By October 31 of each calendar year, FPL shall notify the QS in writing whether the requested scheduled maintenance periods in the detailed plan are acceptable. If FPL objects to any of the requested scheduled maintenance periods, FPL shall advise the QS of the time period closest to the requested period(s) when the outage(s) can be scheduled. The QS shall schedule maintenance outages only during periods approved by FPL, such approval not unreasonably withheld. Once the schedule for maintenance has been established and approved by FPL, either Party may request a subsequent change in such schedule and, except when such event is due to Force Majeure, request approval for such change from the other Party, such approval not to be unreasonably withheld or delayed. Scheduled maintenance outage days shall be limited to seven (7) days per calendar year unless the manufacturer's recommendation of maintenance outage days for the technology and equipment used by the Facility exceeds such 7 day period, provided, such number of days is considered reasonable by prudent industry standards and does not exceed two (2) fourteen (14) day intervals, one in the Spring and one in the Fall, in any calendar year. The scheduled maintenance outage days applicable for the QS are \_\_\_\_\_ days in the Spring and \_\_\_\_\_ days in the Fall of each calendar year, provided the conditions specified in the previous sentence are satisfied. In no event shall maintenance periods be scheduled during the following periods: June 1 through and including October 31st and December 1 through and including February 28 (or 29<sup>th</sup> as the case may be).

8.3 The QS shall comply with reasonable requests by FPL regarding day-to-day and hour-by-hour communication between the Parties relative to electricity production and maintenance scheduling.

8.4 Dispatch and Control

8.4.1 The power supplied by the QS hereunder shall be in the form of three-phase 60 Hertz alternating current, at a nominal operating voltage of \_\_\_\_\_,000 volts ( \_\_\_\_\_ kV) and power factor dispatchable and controllable in the range of 85% lagging to 85% leading as measured at the Delivery Point to maintain system operating parameters, as specified by FPL.

8.4.2 At all times during the term of this Contract, the QS shall operate and maintain the Facility: (a) in such a manner as to ensure compliance with its obligations hereunder, in accordance with prudent engineering and operating practices and applicable law, and (b) with all system protective equipment in service whenever the Facility is connected to, or is operated in parallel with, FPL's system. The QS shall install at the Facility those system protection and control devices necessary to ensure safe and protected operation of all energized equipment during normal testing and repair. The QS shall have qualified personnel test and calibrate all protective equipment at regular intervals 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 the results shall be provided to FPL prior to returning the Facility to service. The specifics of the unit functional trip test will be consistent with good engineering and operating practices.

8.4.3 If the Facility is separated from the FPL system for any reason, under no circumstances shall the QS reconnect the Facility into FPL's system without first obtaining FPL's prior written approval.

8.4.4 During the term of this Contract, the QS shall employ qualified personnel for managing, operating and maintaining the Facility and for coordinating such with FPL. If the Facility has a Committed Capacity greater than 10 MW then, the QS 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. If the Facility has a Committed Capacity equal to or less than 10 MW then the QS shall ensure that operating personnel are on duty at least eight (8) hours per day from 8 AM EST to 5 PM EST from Monday to Friday, with an operator on call at all other hours.

8.4.5 FPL shall at all times be excused from its obligation to purchase and receive energy and capacity hereunder, and FPL shall have the ability to require the QS to curtail or reduce deliveries of energy, to the extent necessary (a) to maintain the reliability and integrity of any part of FPL's system, (b) in the event that FPL determines that a failure to do so is likely to endanger life or property, or (c) is likely to result in significant disruption of electric service to FPL's customers. FPL shall give the QS prior notice, if practicable, of its intent to refuse, curtail or reduce FPL's acceptance of energy and firm capacity pursuant to this Section and will act to minimize the frequency and duration of such occurrences.

(Continued on Sheet No. 9.036)

Issued by: S. E. Romig, Director, Rates and Tariffs  
Effective: September 13, 2016

FLORIDA POWER & LIGHT COMPANY

~~Second~~Third Revised Sheet No. 9.036  
Cancels ~~First~~Second Sheet No. 9.036

(Continued from Sheet No. 9.035)

8.4.6 After providing notice to the QS, FPL shall not be required to purchase or receive energy from the QS during any period in which, due to operational circumstances, the purchase or receipt of such energy would result in FPL's incurring costs greater than those which it would incur if it did not make such purchases. An example of such an occurrence would be a period during which the load being served is such that the generating units on line are base load units operating at their minimum continuous ratings and the purchase of additional energy would require taking a base load unit off the line and replacing the remaining load served by that unit with peaking-type generation. FPL shall give the QS as much prior notice as practicable of its intent not to purchase or receive energy and firm capacity pursuant to this Section.

8.4.7 If the Facility has a Committed Capacity less than 75 MW, control, scheduling and dispatch of firm capacity and energy shall be the responsibility of the QS. If the Facility has a Committed Capacity greater than or equal to 75 MW, then control, scheduling and dispatch of firm capacity and energy shall be the responsibility of the QS, except during a "Dispatch Hour", i.e., any clock hour for which FPL requests the delivery of such capacity and energy. During any Dispatch Hour: (a) control of the Facility will either be by Seller's manual control under the direction of FPL (whether orally or in writing) or by Automatic Generation Control by FPL's system control center as determined by FPL, and (b) FPL may request that the real power output be at any level up to the Committed Capacity of the Facility, provided, in no event shall FPL require the real power output of the Facility to be below the Facility's Minimum Load without decommitting the Facility. The Facility shall deliver the capacity and energy requested by FPL within \_\_\_\_\_ minutes, taking into account the operating limitations of the generating equipment as specified by the manufacturer, provided such time period specified herein is considered reasonable by prudent industry standards for the technology and equipment being utilized and assuming the Facility is operating at or above its Minimum Load. Start-up time from Cold Shutdown and Facility Turnaround time from Hot to Hot will be taken into consideration provided such are reasonable and consistent with prudent industry practices for the technology and equipment being utilized. The Facility's Operating Characteristics have been provided by the QS and are set forth in Appendix D, Section IV of Rate Schedule QS-2.

8.4.8 If the Facility has a Committed Capacity of less than 75 MW, FPL may require during certain periods, by oral, written, or electronic notification that the QS cause the Facility to reduce output to a level below the Committed Capacity but not lower than the Facility's Minimum Load. FPL shall provide as much notice as practicable, normally such notice will be of at least four (4) hours. The frequency of such request shall not exceed eighteen (18) times per calendar year and the duration of each request shall not exceed four (4) hours.

8.4.9 FPL's exercise of its rights under this Section 8 shall not give rise to any liability or payment obligation on the part of FPL, including any claim for breach of contract or for breach of any covenant of good faith and fair dealing.

9. Completion/Performance Security

The security contemplated by this Section 9 constitutes security for, but is not a limitation of, QS's obligations hereunder and shall not be FPL's exclusive remedy for QS's failure to perform in accordance with this Agreement.

9.1 As security for the achievement of the Guaranteed Capacity Delivery Date and satisfactory performance of its obligations hereunder, the QS shall provide FPL either: (a) an unconditional, irrevocable, standby letter of credit(s) with an expiration date no earlier than the end of the first (1st) anniversary of the Capacity Delivery Date (or the next business day thereafter), issued by a U.S. commercial bank or the U.S. branch of a foreign bank having a Credit Rating of A- or higher by S&P or A3 or higher by Moody's (a "Qualified Issuer"), in form and substance acceptable to FPL (including provisions (i) permitting partial and full draws and (ii) permitting FPL to draw in full if such letter of credit is not renewed or replaced as required by the terms hereof at least thirty (30) business days prior to its expiration date) ("Letter of Credit"); (b) a bond, issued by a financially sound Company acceptable to FPL and in a form and substance acceptable to FPL, ("Bond"); or (c) a cash collateral deposited with FPL ("Cash Collateral") (any of (a), (b), or (c), the "Completion/Performance Security"). Completion/Performance Security shall be provided in the amount and by the date listed below:

(a) \$50.00 per kW (for the number of kW of Committed Capacity set forth in Section 5.1) to be delivered to FPL within five (5) business days of the Effective Date; and

(b) \$100.00 per kW (for the number of kW of Committed Capacity set forth in Section 5.1) to be delivered to FPL two years before the Guaranteed Capacity Delivery Date.

"Credit Rating" means with respect to any entity, on any date of determination, the respective ratings then assigned to such entity's unsecured, senior long-term debt or deposit obligations (not supported by third party credit enhancement) by S&P, Moody's or other specified rating agency or agencies or if such entity does not have a rating for its unsecured, senior long-term debt or deposit obligations, then the rating assigned to such entity as its "corporate credit rating" by S&P.

"Moody's" means Moody's Investors Service, Inc. or its successor.

"S&P" means Standard & Poor's Ratings Group (a division of The McGraw-Hill Companies, Inc.) or its successor.

(Continued on Sheet No. 9.037)

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Effective: September 13, 2016



FLORIDA POWER & LIGHT COMPANY

~~Eighth~~<sup>Ninth</sup> Revised Sheet No. 9.037  
Cancels ~~Seventh~~<sup>Eighth</sup> Revised Sheet No. 9.037

(Continued from Sheet No. 9.036)

"Moody's" means Moody's Investors Service, Inc. or its successor.

"S&P" means Standard & Poor's Ratings Group (a division of The McGraw-Hill Companies, Inc.) or its successor.

9.2 The specific security instrument provided for purposes of this Contract is:

- ( ) Letter of Credit.
- ( ) Bond.
- ( ) Cash Collateral.

9.3 FPL shall have the right to monitor (a) the financial condition of the issuer of a Letter of Credit in the event any Letter of Credit is provided by the QS, and (b) the insurer, in the case of any Bond. In the event the issuer of a Letter of Credit no longer qualifies as Qualified Issuer or the issuer of a Bond is no longer financially sound, FPL may require the QS to replace the Letter of Credit or the Bond, as applicable. Such replacement Letter of Credit or bond must be issued by a Qualified Issuer or a financially sound issuer, as applicable, within ten (10) business days following written notification to the QS of the requirement to replace. Failure by the QS to comply with the requirements of this Section 9.3 shall be grounds for FPL to draw in full on the existing Letter of Credit or bond and to exercise any other remedies it may have hereunder.

9.4 Notwithstanding the foregoing provisions of this Section 9, pursuant to FPSC Rule 25-17.091(4), F.A.C., a QS qualifying as a "Solid Waste Facility" pursuant to Section 377.709(3) or (5), F.S., respectively, may use an unsecured written commitment or promise to pay in a form reasonably acceptable to FPL, by the local government which owns the Facility or on whose behalf the QS operates the Facility, to secure its obligation to achieve on a timely basis the Capacity Delivery Date and the satisfactory performance of its obligations hereunder.

9.5 FPL shall be entitled to draw the Completion/Performance Security to satisfy any obligation or liability of QS arising pursuant to this Contract.

9.5.1 If the QS fails to achieve the Capacity Delivery Date on or before the in-service date of the Avoided Unit or such later date as permitted by FPL pursuant to Section 5.6, FPL shall be entitled immediately to receive, draw upon, or retain, as the case may be, one-hundred (100%) of the Completion/Performance Security as liquidated damages free from any claim or right of any nature whatsoever of the QS, including any equity or right of redemption by the QS. The Parties acknowledge that the injury that FPL will suffer as a result of delayed availability of Committed Capacity and energy is difficult to ascertain and that FPL may accept such sums as liquidated damages and resort to any other remedies which may be available to it under law or in equity.

9.5.2 In the event that FPL requires the QS to perform one or more Committed Capacity Test(s) at any time on or before the first anniversary of the Capacity Delivery Date pursuant to Section 5.3 and, in connection with any such Committed Capacity Test(s), the QS fails to demonstrate a Capacity of at least one-hundred percent (100%) of the Committed Capacity set forth in Section 5.1, FPL shall be entitled immediately to receive, draw upon, or retain, as the case may be, one-hundred percent (100%) of the Completion/Performance Security as liquidated damages free from any claim or right of any nature whatsoever of the QS, including any equity or right of redemption by the QS.

9.5.3 QS shall promptly, but in no event more than five (5) business days following any draws on the Completion/Performance Security, replenish the Completion/Performance Security to the amounts required herein.

9.6 The QS, as the Pledgor of the Completion/Performance Security, hereby pledges to FPL, as the secured Party, as security for the achievement of the Capacity Delivery Date and satisfactory performance of its obligations hereunder, and grants to FPL a first priority continuing security interest in, lien on and right of set-off against all Completion/Performance Security transferred to or received by FPL hereunder. Upon the transfer or return by FPL to the QS of Completion/Performance Security, the security interest and lien granted hereunder on that Completion/Performance Security will be released immediately and, to the extent possible, without any further action by either party.

(Continued on Sheet No. 9.038)

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FLORIDA POWER & LIGHT COMPANY

First Revised Sheet No. 9.038  
Cancels Original Sheet No. 9.038

(Continued from Sheet No. 9.037)

9.7 In lieu of any interest, dividends or other amounts paid or deemed to have been paid with respect to Cash Collateral held by FPL (all of which may be retained by FPL), FPL will transfer to the QS on a monthly basis the Interest Amount, as calculated by FPL.

"Interest Amount" means, with respect to each monthly period, the aggregate sum of the amounts of interest calculated for each day in that monthly period on the principal amount of Cash Collateral held by FPL on that day, determined by FPL for each such day as follows:

- (x) the amount of that Cash Collateral on that day; multiplied by
- (y) the Interest Rate in effect for that day; divided by
- (z) 360.

"Interest Rate" means: the Federal Funds Overnight rate as from time to time in effect.

"Federal Funds Overnight Rate" means, for the relevant determination date, the rate opposite the caption "Federal Funds (Effective)" as set forth for that day in the weekly statistical release designated as H.15 (519), or any successor publication, published by the Board of Governors of the Federal Reserve System. If on the determination date such rate is not yet published in H.15 (519), the rate for that date will be the rate set in Composite 3:30 P.M. Quotations for U.S. Government Securities for that day under the caption "Federal Funds/Effective Rate." If on the determination date such rate is not yet published in either H.15 (519) or Composite 3:30 P.M. Quotations for U.S. Government Securities, the rate for that date will be determined as if the Parties had specified "USD-Federal Funds-Reference Dealers" as the applicable rate.

10. Termination Fee

10.1 In the event that the QS receives capacity payments pursuant to Option B, Option C, Option D or Option E (as such options are defined in Appendix A and elected by the QS in Appendix E) or receives energy payments pursuant to the Fixed Firm Energy Payment Option (as such option is defined in Appendix A and elected by the QS in Appendix E) then, upon the termination of this Contract, the QS shall owe and be liable to FPL for a termination fee calculated in accordance with Appendix C (the "Termination Fee"). The QS's obligation to pay the Termination Fee shall survive the termination of this Contract. FPL shall provide the QS, on a monthly basis, a calculation of the Termination Fee.

10.1.1 The Termination Fee shall be secured (with the exception of governmental solid waste facilities covered by FPSC Rule 25-17.091 in which case the QS may use an unsecured written commitment or promise to pay, in a form reasonably acceptable to FPL, by the local government which owns the Facility or on whose behalf the QS operates the Facility, to secure its obligation to pay the Termination Fee) by the QS by: (a) an unconditional, irrevocable, standby letter(s) of credit issued by Qualified Issuer in form and substance acceptable to FPL (including provisions (a) permitting partial and full draws and (b) permitting FPL to draw upon such letter of credit, in full, if such letter of credit is not renewed or replaced at least thirty (30) business days prior to its expiration date, ("Termination Fee Letter of Credit"); (b) a bond, issued by a financially sound Company and in a form and substance acceptable to FPL, ("Termination Fee Bond"); or (c) a cash collateral deposit with FPL ("Termination Fee Cash Collateral") (any of (a), (b), or (c), the "Termination Security").

10.1.2 The specific security instrument selected by the QS for purposes of this Contract is:

- ☐ Termination Fee Letter of Credit
- ☐ Termination Fee Bond
- ☐ Termination Fee Cash Collateral

10.1.3 FPL shall have the right to monitor the financial condition of (i) the issuer of a Termination Fee Letter of Credit in the case of any Termination Fee Letter of Credit and (ii) the insurer(s), in the case of any Termination Fee Bond. In the event the issuer of a Termination Fee Letter of Credit is no longer a Qualified Issuer or the issuer of a Termination Fee Bond is no longer financially sound, FPL may require the QS to replace the Termination Fee Letter of Credit or the Termination Fee Bond, as applicable. In the event that FPL notifies the QS that it requires such a replacement, the replacement Termination Fee Letter of Credit or Termination Fee Bond, as applicable, must be issued by a Qualified Issuer or financially sound company within ten (10) business days following such notification. Failure by the QS to comply with the requirements of this Section 10.1.2 shall be grounds for FPL to draw in full on any existing Termination Fee Letter of Credit or Termination Fee Bond and to exercise any other remedies it may have hereunder.

(Continued on Sheet No. 9.039)

Issued by: S. E. Romig, Director, Rates and Tariffs  
Effective: September 13, 2016

FLORIDA POWER & LIGHT COMPANY

First Revised Sheet No. 9.039  
Cancels Original Sheet No. 9.039

(Continued from Sheet No. 9.038)

10.1.4 After the close of each calendar quarter (March 31, June 30, September 30, and December 31) occurring subsequent to the Capacity Delivery Date, the QS shall provide to FPL within ten (10) business days of the close of such calendar quarter with written assurance and documentation (the "Security Documentation"), in form and substance acceptable to FPL, that the amount of the most recently provided 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, FPL shall have the right to request, and the QS shall be obligated to deliver within five (5) business days of such request, such Security Documentation. Failure by the QS to comply with the requirements of this Section 10.1.3 shall be grounds for FPL to draw in full on any existing Termination Fee Letter of Credit or Termination Fee Bond or to retain any Termination Fee Cash Collateral, and to exercise any other remedies it may have hereunder to be applied against any Termination Fee that may be due and owing to FPL or that may in the future be due and owing to FPL.

10.1.5 Upon any termination of this Contract following the Capacity Delivery Date, FPL shall be entitled to receive (and in the case of the Termination Fee Letter of Credit or Termination Fee Bond, draw upon such Termination Fee Letter of Credit or Termination Fee Bond) and retain one hundred percent (100%) of the Termination Security to be applied against any Termination Fee that may be due and owing to FPL or that may in the future be due and owing to FPL. FPL will transfer to the QS any proceeds and Termination Security remaining after liquidation, set-off and/or application under this Article after satisfaction in full of all amounts payable by the QS with respect to any Termination Fee or other obligations due to FPL; the QS in all events will remain liable for any amounts remaining unpaid after any liquidation, set-off and/or application under this Article.

10.2 The QS, as the Pledgor of the Termination Security, hereby pledges to FPL, as the secured Party, as security for the Termination Fee, and grants to FPL a first priority continuing security interest in, lien on and right of set-off against all Termination Security transferred to or received by FPL hereunder. Upon the transfer or return by FPL to the QS of Termination Security, the security interest and lien granted hereunder on that Termination Security will be released immediately and, to the extent possible, without any further action by either party.

10.3 In lieu of any interest, dividends or other amounts paid or deemed to have been paid with respect to Termination Fee Cash Collateral held by FPL (all of which may be retained by FPL), FPL will transfer to the QS on a monthly basis the Interest Amount, Pursuant to Section 9.7.

#### 11. Performance Factor

FPL desires to provide an incentive to the QS to operate the Facility during on-peak and off-peak periods in a manner which approximates the projected performance of FPL's Avoided Unit. A formula to achieve this objective is attached as Appendix B.

(Continued on Sheet No. 9.040)

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**FLORIDA POWER & LIGHT COMPANY**

**Fourth Revised Sheet No. 9.040  
Cancels Third Revised Sheet No. 9.040**

(Continued from Sheet No. 9.039)

**12. Default**

Notwithstanding the occurrence of any Force Majeure as described in Section 16, each of the following shall constitute an Event of Default:

- 12.1 The QS fails to meet the applicable requirements specified in Section 1 of this Contract;
- 12.2 The QS changes or modifies the Facility from that provided in Section 1 with respect to its type, location, technology or fuel source, without prior written approval from FPL;
- 12.3 After the Capacity Delivery Date, the Facility fails, for twelve (12) consecutive months, to maintain an Annual Capacity Billing Factor, as described in Appendix B, of at least 70%;
- 12.4 The QS fails to comply with any of the provisions of Section 9.0 hereof (Completion/Performance Security).
- 12.5 The QS fails to comply with any of the provisions of Section 10.0 hereof (Termination Security);
- 12.6 The QS 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 the QS or if a receiver shall be appointed for the QS or any of its assets or properties; or if any part of the QS'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 30 days thereof; or if the QS shall make an assignment for the benefit of creditors, or admit in writing its inability to pay its debts as they become due.
- 12.7 The QS fails to give proper assurance acceptable to FPL of adequate performance as specified under this Contract within 30 days after FPL, with reasonable grounds for insecurity, has requested in writing such assurance.
- 12.8 The QS materially fails to perform as specified under this Contract, including, but not limited to, the QS's obligations under any part of Sections 8, and 18.
- 12.9 The QS fails to achieve the permitting, licensing, certification, and all federal, state and local governmental environmental and licensing approvals required to initiate construction of the Facility by no later than one year prior to Guaranteed Capacity Date.
- 12.10 The QS fails to comply with any of the provisions of Section 18.3 hereof (Project Management).
- 12.11 Any of the representations or warranties made by the QS in this Contract is false or misleading in any material respect.
- 12.12 The occurrence of an event of default by the QS under the Interconnection Agreement or any applicable Wheeling Agreement;
- 12.13 The QS fails to satisfy its obligations under Section 18.14 hereof (Assignment).
- 12.14 The QS fails to deliver to FPL in accordance with this Contract any energy or firm capacity required to be delivered hereunder or the delivery or sale of any such energy and firm capacity to an entity other than FPL.
- 12.15 The QS fails to perform any material covenant or obligation under this Contract not specifically mentioned in this Section 12.
- 12.16 If at any time after the Capacity Delivery Date, the QS 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 5.1 (as such level may be reduced by Section 5.3) within twelve (12) months following the occurrence of such event of Force Majeure.

(Continued on Sheet No. 9.041)

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FLORIDA POWER & LIGHT COMPANY

First Revised Sheet No. 9.041  
Cancels Original Sheet No. 9.041

(Continued from Sheet No. 9.040)

13. FPL's Rights in the Event of Default

13.1 Upon the occurrence of any of the Events of Default in Section 12, FPL may:

- (a) terminate this Contract, without penalty or further obligation, except as set forth in Section 13.2, by written notice to the QS, and offset against any payment(s) due from FPL to the QS, any monies otherwise due from the QS to FPL;
- (b) draw on the Completion/Performance Security pursuant to Section 9 or collect the Termination Fee pursuant to Section 10 as applicable; and
- (c) exercise any other remedy(ies) which may be available to FPL at law or in equity.

13.2 In the case of an Event of Default, the QS recognizes that any remedy at law may be inadequate because this Contract is unique and/or because the actual damages of FPL may be difficult to reasonably ascertain. Therefore, the QS agrees that FPL shall be entitled to pursue an action for specific performance, and the QS waives all of its rights to assert as a defense to such action that FPL's remedy at law is adequate.

13.3 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.

14. Indemnification/Limits

14.1 FPL and the QS shall each be responsible for its own facilities. FPL and the QS shall each be responsible for ensuring adequate safeguards for other FPL customers, FPL's and the QS's personnel and equipment, and for the protection of its own generating system. Subject to section 2.7 Indemnity to Company, or section 2.71 Indemnity to Company - Governmental, FPL's General Rules and Regulations of Tariff Sheet No.6.020 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, "FPL Entities" and "QS 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) 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, act or incident, including the transmission and use of electricity, that is the result of, or proximately caused by, the Indemnifying Party or its contractors, agents, servants or employees.

14.2 Payment by an Indemnified Party will not be a condition precedent to the obligations of the Indemnifying Party under Section 14. No Indemnified Party under Section 14 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 14 in the event of a breach of the foregoing sentence by the Indemnified Party. Section 14 shall survive termination of this Agreement.

14.3 Limitation on Consequential, Incidental and Indirect Damages. TO THE FULLEST EXTENT PERMITTED BY LAW, NEITHER THE QS NOR FPL, NOR THEIR RESPECTIVE OFFICERS, DIRECTORS, AGENTS, EMPLOYEES, MEMBERS, PARENTS, SUBSIDIARIES OR AFFILIATES, SUCCESSORS OR ASSIGNS, OR THEIR RESPECTIVE OFFICERS, DIRECTORS, AGENTS, EMPLOYEES, MEMBERS, PARENTS, SUBSIDIARIES OR AFFILIATES, SUCCESSORS OR ASSIGNS, SHALL BE LIABLE TO THE OTHER PARTY OR THEIR RESPECTIVE OFFICERS, DIRECTORS, AGENTS, EMPLOYEES, MEMBERS, PARENTS, SUBSIDIARIES OR AFFILIATES, SUCCESSORS OR ASSIGNS, FOR CLAIMS, SUITS, ACTIONS OR CAUSES OF ACTION FOR INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE, MULTIPLE OR CONSEQUENTIAL DAMAGES CONNECTED WITH OR RESULTING FROM PERFORMANCE OR NON-PERFORMANCE OF THIS CONTRACT, OR ANY ACTIONS UNDERTAKEN IN CONNECTION WITH OR RELATED TO THIS CONTRACT, INCLUDING WITHOUT LIMITATION, ANY SUCH DAMAGES WHICH ARE BASED UPON CAUSES OF ACTION FOR BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE AND MISREPRESENTATION), BREACH OF WARRANTY, STRICT LIABILITY, STATUTE, OPERATION OF LAW, UNDER ANY INDEMNITY PROVISION OR ANY OTHER THEORY OF RECOVERY. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, THAT OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT, AND THAT THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE ANTICIPATED HARM OR LOSS. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT DAMAGES ONLY, AND SUCH DIRECT DAMAGES SHALL BE THE SOLE AND EXCLUSIVE MEASURE OF DAMAGES AND

(Continued on Sheet No. 9.042)

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**FLORIDA POWER & LIGHT COMPANY**

Second Revised Sheet No. 9.042  
Cancels First Sheet No. 9.042

(Continued from Sheet No. 9.041)

ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED; PROVIDED, HOWEVER, THE PARTIES AGREE THAT THE FOREGOING LIMITATIONS WILL NOT IN ANY WAY LIMIT LIABILITY OR DAMAGES UNDER ANY THIRD PARTY CLAIMS OR THE LIABILITY OF A PARTY WHOSE ACTIONS GIVING RISE TO SUCH LIABILITY CONSTITUTE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. THE PROVISIONS OF THIS SECTION SHALL APPLY REGARDLESS OF FAULT AND SHALL SURVIVE TERMINATION, CANCELLATION, SUSPENSION, COMPLETION OR EXPIRATION OF THIS CONTRACT. NOTHING CONTAINED IN THIS AGREEMENT SHALL BE DEEMED TO BE A WAIVER OF A PARTY'S RIGHT TO SEEK INJUNCTIVE RELIEF.

**15. Insurance**

15.1 The QS 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 FPL on a standard "Insurance Services Office" commercial general liability form (such policy or policies, collectively, the "QS Insurance"). A certificate of insurance shall be delivered to FPL at least fifteen (15) calendar days prior to the start of any interconnection work. At a minimum, the QS 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 and the Interconnection Agreement, or (ii) caused by operation of the Facility or any of the QS's equipment or by the QS's failure to maintain the Facility or the QS's equipment in satisfactory and safe operating condition. Effective at least fifteen (15) calendar days prior to the synchronization of the Facility with FPL's system, the QS Insurance shall be amended to include coverage for interruption or curtailment of power supply in accordance with industry standards. Without limiting the foregoing, the QS Insurance must be reasonably acceptable to FPL. Any premium assessment or deductible shall be for the account of the QS and not FPL.

15.2 The QS Insurance shall have a minimum limit of one million dollars (\$1,000,000) per occurrence, combined single limit, for bodily injury (including death) or property damage.

15.3 In the event that such insurance becomes totally unavailable or procurement thereof becomes commercially impracticable, such unavailability shall not constitute an Event of Default under this Contract, but FPL and the QS shall enter into negotiations to develop substitute protection which the Parties in their reasonable judgment deem adequate.

15.4 To the extent that the QS 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 FPL Entities and the QS Entities. Furthermore, to the extent the QS Insurance is on a "claims made" basis, the QS'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 QS Insurance is on an "occurrence" basis, such insurance shall be maintained in effect at all times by the QS during the term of this Contract.

15.5 The QS Insurance shall provide that it may not be cancelled or materially altered without at least thirty (30) calendar days' written notice to FPL. The QS shall provide FPL with a copy of any material communication or notice related to the QS Insurance within ten (10) business days of the QS's receipt or issuance thereof.

15.6 The QS shall be designated as the named insured and FPL shall be designated as an additional named insured under the QS Insurance. The QS Insurance shall be endorsed to be primary to any coverage maintained by FPL.

**16. Force Majeure**

Force Majeure is defined as an event or circumstance that is not within the reasonable control of, or the result of the negligence of, the affected party, and which, by the exercise of due diligence, the affected party is unable to overcome, avoid, or cause to be avoided in a commercially reasonable manner. Such events or circumstances may include, but are not limited to, 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, difficulties (not caused by the failure of the affected party to comply with the terms of a collective bargaining agreement), or actions or restraints by court order or governmental authority or arbitration award. Force Majeure shall not include (a) the QS's ability to sell capacity and energy to another market at a more advantageous price; (b) 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 Facility; (c) a failure of performance of any other entity, including any entity providing electric transmission service to the QS, except to the extent that such failure was caused by an event that would otherwise qualify as a Force Majeure event; (d) failure of the QS to timely apply for or obtain permits.

(Continued on Sheet No. 9.043)

Issued by: S. E. Romig, Director, Rates and Tariffs  
Effective: September 13, 2016



**FLORIDA POWER & LIGHT COMPANY**

First Revised Sheet No. 9.043  
Cancels Original Sheet No. 9.043

(Continued from Sheet No. 9.042)

16.1 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.

16.2 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 two (2) 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.

16.3 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.

16.4 If the QS suffers an occurrence of an event of Force Majeure that reduces the generating capability of the Facility below the Committed Capacity, the QS may, upon notice to FPL, temporarily adjust the Committed Capacity as provided in Sections 16.5 and 16.6. Such adjustment shall be effective the first calendar day immediately following FPL's receipt of the notice or such later date as may be specified by the QS. Furthermore, such adjustment shall be the minimum amount necessitated by the event of Force Majeure.

16.5 If the Facility is rendered completely inoperative as a result of Force Majeure, the QS 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, FPL shall have no obligation to make capacity payments hereunder.

16.6 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 QS shall temporarily set the Committed Capacity at the maximum capability that the Facility can reasonably be expected to operate.

16.7 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 provision of this Contract, upon such cessation or cure, FPL shall have the right to require a Committed Capacity Test to demonstrate the Facility's compliance with the requirements of this section 16.7. Any Committed Capacity Test required by FPL under this Section shall be additional to any Committed Capacity Test under Section 5.3.

16.8 During the occurrence of an event of Force Majeure and a reduction in Committed Capacity under Section 16.4, all Monthly Capacity Payments shall reflect, pro rata, the reduction in Committed Capacity, and the Monthly Capacity Payments will continue to be calculated in accordance with the pay-for-performance provisions in Appendix B.

16.9 The QS agrees to be responsible for and pay the costs necessary to reactivate the Facility and/or the interconnection with FPL's system if the same is (are) rendered inoperable due to actions of the QS, its agents, or Force Majeure events affecting the QS, the Facility or the interconnection with FPL. FPL agrees to reactivate, at its own cost, the interconnection with the Facility in circumstances where any interruptions to such interconnections are caused by FPL or its agents.

**17. Representations, Warranties, and Covenants of QS**

The QS represents and warrants that as of the Effective Date and for the term of this Contract:

**17.1 Organization, Standing and Qualification**

The QS is a \_\_\_\_\_ (corporation, partnership, or other, as applicable) duly organized and validly existing in good standing under the laws of \_\_\_\_\_ 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 QS 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 FPL.

(Continued on Sheet No. 9.044)

Issued by: S. E. Romig, Director, Rates and Tariffs  
Effective: August 18, 2009

**FLORIDA POWER & LIGHT COMPANY**

Second Revised Sheet No. 9.044  
Cancels First Sheet No. 9.044

(Continued from Sheet No. 9.043)

**17.2 Due Authorization, No Approvals, No Defaults, etc.**

Each of the execution, delivery and performance by the QS of this Contract has been duly authorized by all necessary action on the part of the QS, does not require any approval, except as has been heretofore obtained, of the \_\_\_\_\_ (shareholders, partners, or others, as applicable) of the QS or any consent of or approval from any trustee, lessor or holder of any indebtedness or other obligation of the QS, except for such as have been duly obtained, and does not contravene or constitute a default under any law, the \_\_\_\_\_ (articles of incorporation, bylaws, or other as applicable) of the QS, or any agreement, judgment, injunction, order, decree or other instrument binding upon the QS, or subject the Facility or any component part thereof to any lien other than as contemplated or permitted by this Contract. This Contract constitutes QS's legal, valid and binding obligation, enforceable against it in accordance with the terms hereof, except as such enforceability may be limited by applicable bankruptcy laws from time to time in effect that affect creditors' rights generally or by general principles of equity (regardless of whether such enforcement is considered in equity or at law).

**17.3 Compliance with Laws**

The QS has knowledge of all laws and business practices that must be followed in performing its obligations under this Contract. The QS 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 QS or FPL.

**17.4 Governmental Approvals**

Except as expressly contemplated herein, neither the execution and delivery by the QS of this Contract, nor the consummation by the QS of any of the transactions 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 in respect of governmental authority, except in respect of 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 QS has no reason to believe that the same will not be readily obtainable in the ordinary course of business upon due application therefore).

**17.5 No Suits, Proceedings**

There are no actions, suits, proceedings or investigations pending or, to the knowledge of the QS, 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 the QS'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. The QS has no knowledge of a violation or default with respect to any law which could result in any such materially adverse effect or impairment. The QS is not in breach of, in default under, or in violation of, any applicable Law, or the provisions of any authorization, or in breach of, in default under, or in violation of, or in conflict with any provision of any promissory note, indenture or any evidence of indebtedness or security therefore, lease, contract, or other agreement by which it is bound, except for any such breaches, defaults, violations or conflicts which, individually or in the aggregate, could not reasonably be expected to have a material adverse effect on the business or financial condition of Buyer or its ability to perform its obligations hereunder.

**17.6 Environmental Matters**

**17.6.1 QS Representations**

To the best of its knowledge after diligent inquiry, the QS 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.

**17.6.2 Ownership and Offering For Sale Of Renewable Energy Attributes**

The QS retains any and all rights to own and to sell any and all environmental attributes associated with the electric generation of the Facility, including but not limited to, any and all renewable energy certificates, "green tags" or other tradable environmental interests (collectively "RECs"), of any description.

(Continued on Sheet No. 9.045)

Issued by: S. E. Romig, Director, Rates and Tariffs  
Effective: August 18, 2009



**FLORIDA POWER & LIGHT COMPANY**

**Third Revised Sheet No. 9.045  
Cancels Second Revised Sheet No. 9.045**

(Continued from Sheet No. 9.044)

**17.6.3 Changes in Environmental and Governmental Regulations**

If new environmental and other regulatory requirements enacted during the term of the Contract change FPL's full avoided cost of the unit on which the Contract is based, either party can elect to have the contract reopened.

**17.7 Interconnection/Wheeling Agreement**

The QS has executed an interconnection agreement with FPL, or represents or warrants that it has entered into a valid and enforceable Interconnection Agreement with the utility in whose service territory the Facility is located, pursuant to which the QS assumes contractual responsibility to make any and all transmission-related arrangements (including control area services) between the QS and the transmitting utility for delivery of the Facility's capacity and energy to FPL.

**17.8 Technology and Generator Capabilities**

That for the term of this Contract the Technology and Generator Capabilities table set forth in Section I is accurate and complete.

**18. General Provisions**

**18.1 Project Viability**

To assist FPL in assessing the QS's financial and technical viability, the QS shall provide the information and documents requested in Appendix D or substantially similar documents, to the extent the documents apply to the type of Facility covered by this Contract, and to the extent the documents are available. All documents to be considered by FPL must be submitted at the time this Contract is presented to FPL. Failure to provide the following such documents may result in a determination of non-viability by FPL.

**18.2 Permits, Site Control**

The QS hereby agrees to obtain and maintain Permits which the QS is required to obtain as a prerequisite to engaging in the activities specified in this Contract. QS shall also obtain and maintain Site Control for the Term of the Contract.

**18.3 Project Management**

18.3.1 If requested by FPL, the QS shall submit to FPL its integrated project schedule for FPL's review within sixty calendar days from the execution of this Contract, and a start-up and test schedule for the Facility at least sixty 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 FPL, the QS shall submit progress reports in a form satisfactory to FPL every calendar month until the Capacity Delivery Date and shall notify FPL of any changes in such schedules within ten calendar days after such changes are determined. FPL shall have the right to monitor the construction, start-up and testing of the Facility, either on-site or off-site. FPL'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.

18.3.2 The QS shall provide FPL 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 current elementary diagrams for review and inspection at FPL no later than one hundred eighty calendar days prior to the initial synchronization date.

**18.4 Assignment**

This Agreement shall inure to the benefit of and shall be binding upon the Parties and their respective successors and assigns. This Agreement shall not be assigned or transferred by either Party without the prior written consent of the other Party, such consent to be granted or withheld in such other Party's sole discretion. Any direct or indirect change of control of QS (whether voluntary or by operation of law) shall be deemed an assignment and shall require the prior written consent of FPL. Notwithstanding the foregoing, either Party may, without the consent of the other Party, assign or transfer this Agreement: (a) to any lender as collateral security for obligations under any financing documents entered into with such lender provided, QS shall be responsible for FPL's reasonable costs and expenses associated with the review, negotiation, execution and delivery of any documents or information pursuant to such collateral assignment, including reasonable attorneys' fees (b) to an affiliate of such Party, provided that such affiliate's creditworthiness is equal to or better than that of such Party (and in no event less than Investment Grade) as determined reasonably by the non-assigning or non-transferring Party and; provided, further, that any such affiliate shall agree in writing to be bound by and to assume the terms and conditions hereof and any and all obligations to the non-assigning or non-transferring Party arising or accruing hereunder from and after the date of such assumption. "Investment Grade" means BBB- or above from Standard & Poor's Corporation or Baa2 or above from Moody's Investor Services.

**18.5 Disclaimer**

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

(Continued on Sheet No. 9.046)

Issued by: S. E. Romig, Director, Rates and Tariffs  
Effective: September 13, 2016

**FLORIDA POWER & LIGHT COMPANY**

**First Revised Sheet No. 9.046  
Cancels Original Sheet No. 9.046**

(Continued from Sheet No. 9.045)

**18.6 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 QS:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

For FPL:

Florida Power & Light Company

700 Universe Boulevard  
Juno Beach, FL 33408  
Attn: EMT Contracts Department

This signed Contract and all related documents may be presented no earlier than 8:00 a.m. on the effective date of the Standard Offer Contract, as determined by the FPSC. 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 & Light Company  
700 Universe Boulevard, Juno Beach, FL 33408  
Attention: Contracts Manager/Coordinator  
EMT Contracts Department

**18.7 Applicable Law**

This Contract shall be construed in accordance with and governed by, and the rights of the Parties shall be construed in accordance with, the laws of the State of Florida as to all matters, including but not limited to matters of validity, construction, effect, performance and remedies, without regard to conflict of law rules thereof.

**18.8 Venue**

The Parties hereby irrevocably submit to the exclusive jurisdiction of the United States District Court for the Southern District of Florida or, in the event that jurisdiction for any matter cannot be established in the United States District Court for the Southern District of Florida, in the state court for Palm Beach County, Florida, solely in respect of the interpretation and enforcement of the provisions of this Contract and of the documents referred to in this Contract, and in respect of the transactions contemplated hereby, and hereby waive, and agree not to assert, as a defense in any action, suit or proceeding for the interpretation or enforcement hereof or of any such document, that it is not subject thereto or that such action, suit or proceeding may not be brought or is not maintainable in said courts or that the venue thereof may not be appropriate or that this Contract or any such document may not be enforced in or by such courts, and the Parties hereto irrevocably agree that all claims with respect to such action or proceeding shall be heard and determined in such a court. The Parties hereby consent to and grant any such court jurisdiction over the persons of such Parties solely for such purpose and over the subject matter of such dispute and agree that mailing of process or other papers in connection with any such action or proceeding in the manner provided in Section 18.8 hereof or in such other manner as may be permitted by Law shall be valid and sufficient service thereof.

(Continued on Sheet No. 9.047)

Issued by: S. E. Romig, Director, Rates and Tariffs  
Effective: October 4, 2011



**FLORIDA POWER & LIGHT COMPANY**

First Revised Sheet No. 9.047  
Cancels Original Sheet No. 9.047

(Continued from Sheet No. 9.046)

**18.9. Waiver of Jury Trial.** EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS CONTRACT IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES, AND THEREFORE EACH PARTY HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT A PARTY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION RESULTING FROM, ARISING OUT OF OR RELATING TO THIS CONTRACT OR THE TRANSACTIONS CONTEMPLATED HEREBY. EACH PARTY CERTIFIES AND ACKNOWLEDGES THAT (a) NO REPRESENTATIVE, AGENT OR ATTORNEY OF THE OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER, (b) EACH PARTY UNDERSTANDS AND HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER, (c) EACH PARTY MAKES THIS WAIVER VOLUNTARILY AND (d) EACH PARTY HAS BEEN INDUCED TO ENTER INTO THIS CONTRACT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 18.9

**18.10 Taxation**

In the event that FPL becomes liable for additional taxes, including interest and/or penalties arising from an Internal Revenue Service's determination, through audit, ruling or other authority, that FPL's payments to the QS for capacity under Options B, C, D, E or for energy pursuant to the Fixed Firm Energy Payment Option D are not fully deductible when paid (additional tax liability), FPL may bill the QS monthly for the costs, including carrying charges, interest and/or penalties, associated with the fact that all or a portion of these capacity payments are not currently deductible for federal and/or state income tax purposes. FPL, at its option, may offset these costs against amounts due the QS hereunder. These costs would be calculated so as to place FPL in the same economic position in which it would have been if the entire capacity payments had been deductible in the period in which the payments were made. If FPL 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 FPL.

**18.11 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.

**18.12 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.

**18.13 Survival of Contract**

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.

**18.14 Record Retention**

The QS agrees to retain for a period of five (5) years from the date of termination hereof all records relating to the performance of its obligations hereunder, and to cause all QS Entities to retain for the same period all such records.

**18.15 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.

(Continued on Sheet No. 9.048)

Issued by: S. E. Romig, Director, Rates and Tariffs  
Effective: September 13, 2016



**FLORIDA POWER & LIGHT COMPANY**

**First Revised Sheet No. 9.048  
Cancels Original Sheet No. 9.048**

(Continued from Sheet No. 9.047)

**18.16 Set-Off**

FPL may at any time, but shall be under no obligation to, set off any and all sums due from the QS against sums due to the QS hereunder.

**18.17 Assistance With FPL's evaluation of FIN 46R**

Accounting rules set forth in Financial Accounting Standards Board Interpretation No. 46 (Revised December 2003) ("FIN 46R"), as well as future amendments and interpretations of those rules, may require FPL to evaluate whether the QS must be consolidated, as a variable interest entity (as defined in FIN 46R), in the consolidated financial statements of FPL. The QS agrees to fully cooperate with FPL and make available to FPL all financial data and other information, as deemed necessary by FPL, to perform that evaluation on a timely basis at inception of the PPA and periodically as required by FIN 46R. If the result of an evaluation under FIN 46R indicates that the QS must be consolidated in the financial statements of FPL, the QS agrees to provide financial statements, together with other required information, as determined by FPL, for inclusion in disclosures contained in the footnotes to the financial statements and in FPL's required filings with the Securities and Exchange Commission ("SEC"). The QS shall provide this information to FPL in a timeframe consistent with FPL's earnings release and SEC filing schedules, to be determined at FPL's discretion. The QS also agrees to fully cooperate with FPL and FPL's independent auditors in completing an assessment of the QS's internal controls as required by the Sarbanes-Oxley Act of 2002 and in performing any audit procedures necessary for the independent auditors to issue their opinion on the consolidated financial statements of FPL. FPL will treat any information provided by the QS in satisfying Section 18.17 as confidential information and shall only disclose such information to the extent required by accounting and SEC rules and any applicable laws.

IN WITNESS WHEREOF, the QS and FPL executed this Contract this \_\_\_\_\_ day of \_\_\_\_\_.

WITNESS:

FLORIDA POWER & LIGHT COMPANY

Date \_\_\_\_\_

WITNESS:

\_\_\_\_\_(QS)

Date \_\_\_\_\_

Issued by: S. E. Romig, Director, Rates and Tariffs  
Effective: July 29, 2008

FLORIDA POWER & LIGHT COMPANY

Sixth Revised Sheet No. 10.300  
Cancels Fifth Revised Sheet No. 10.300

**RATE SCHEDULE QS-2  
APPENDIX A  
TO THE STANDARD OFFER CONTRACT  
STANDARD RATE FOR PURCHASE OF FIRM CAPACITY AND ENERGY  
FROM A RENEWABLE ENERGY FACILITY  
OR A QUALIFYING FACILITY WITH A DESIGN CAPACITY OF 100 KW OR LESS**

**SCHEDULE**

**QS-2, Firm Capacity and Energy**

**AVAILABLE**

The Company will, under the provisions of this Schedule and the Company's "Standard Offer Contract for the Purchase of Firm Capacity and Energy from a Renewable Energy Facility or a Qualifying Facility with a design capacity of 100 KW or less" ("Standard Offer Contract"), purchase firm capacity and energy offered by a Renewable Energy Facility specified in Section 366.91, Florida Statutes or by a Qualifying Facility with a design capacity of 100 KW or less as specified in FPSC Rule 25-17-0832(4) and which is either directly or indirectly interconnected with the Company. Both of these types of facilities shall also be referred to herein as Qualified Seller or "QS".

The Company will petition the FPSC for closure upon any of the following as related to the generating unit upon which this standard offer contract is based i.e. the Avoided Unit : (a) a request for proposals (RFP) pursuant to Rule 25-22.082, F.A.C., is issued, (b) the Company files a petition for a need determination or commences construction of the Avoided Unit when the generating unit is not subject to Rule 25-22.082, F.A.C., or (c) the generating unit upon which the standard offer contract is based is no longer part of the utility's generation plan, as evidenced by a petition to that effect filed with the Commission or by the utility's most recent Ten Year Site Plan.

**APPLICABLE**

To Renewable Energy Facilities as specified in Section 366.91, Florida Statutes producing capacity and energy from qualified renewable resources for sale to the Company on a firm basis pursuant to the terms and conditions of this schedule and the Company's "Standard Offer Contract". Firm Renewable Capacity and Renewable Energy are capacity and energy produced and sold by a QS pursuant to the Standard Offer Contract provisions addressing (among other things) quantity, time and reliability of delivery.

To Qualifying Facilities ("QF"), with a design capacity of 100 KW or less, as specified in FPSC Rule 25-17.0832(4)(a) producing capacity and energy for sale to the Company on a firm basis pursuant to the terms and conditions of this schedule and the Company's "Standard Offer Contract", Firm Capacity and Energy are described by FPSC Rule 25-17.0832, F.A.C., and are capacity and energy produced and sold by a QF pursuant to the Standard Offer Contract provisions addressing (among other things) quantity, time and reliability of delivery.

**CHARACTER OF SERVICE**

Purchases within the territory served by the Company shall be, at the option of the Company, single or three phase, 60 hertz alternating current at any available standard Company voltage. Purchases from outside the territory served by the Company shall be three phase, 60 hertz alternating current at the voltage level available at the interchange point between the Company and the entity delivering the Firm Energy and Capacity from the QS.

**LIMITATION**

Purchases under this schedule are subject to Section 366.91, Florida Statutes and/or FPSC Rules 25-17.0832 through 25-17.091, F.A.C., and 25-17.200 through 25-17.310 F.A.C and are limited to those Facilities which:

- A. Commit to commence deliveries of firm capacity and energy no later than the in-service date of the Avoided Unit, as detailed in Appendix II, and to continue such deliveries for a period of at least 10 years up to a maximum of the life of the avoided unit;
- B. Are not currently under contract with the Company or with any other entity for the Facility's output for the period specified above

(Continued on Sheet No. 10.301)

Issued by: S. E. Romig, Director, Rates and Tariffs  
Effective: June 25, 2013

FLORIDA POWER & LIGHT COMPANY

~~Seventh~~<sup>Eighth</sup> Revised Sheet No. 10.301  
Cancels ~~Sixth~~<sup>Seventh</sup> Revised Sheet No. 10.301

(Continued from Sheet No. 10.300)

**RATES FOR PURCHASES BY THE COMPANY**

Firm Capacity and Energy are purchased at a unit cost, in dollars per kilowatt per month and cents per kilowatt-hour, respectively, based on the capacity required by the Company. For the purpose of this Schedule, an Avoided Unit ~~has and an alternative have~~ been designated by the Company, and ~~is are~~ detailed in Appendix II to this Schedule. Appendix I to this Schedule describes the methodology used to calculate payment schedules, applicable to the Company's Standard Offer Contract filed and approved pursuant to Section 366.91, Florida Statutes and to FPSC Rules 25-17.082 through 25-17.091, F.A.C and 25-17.200 through 25-17.310, F.A.C.

**A. Firm Capacity Rates**

Options A through E are available for payment of firm capacity which is produced by a QS and delivered to the Company. Once selected, an option shall remain in effect for the term of the Standard Offer Contract with the Company. A payment schedule, for the normal payment option as shown below, contains the monthly rate per kilowatt of Firm Capacity which the QS has contractually committed to deliver to the Company and is based on a contract term which extends ten (10) years beyond the in-service date of the Avoided Unit. Payment schedules for other contract terms, as specified in Appendix E, will be made available to any QS upon request and may be calculated based upon the methodologies described in Appendix I. The currently approved parameters used to calculate the schedule of payments are found in Appendix II to this Schedule.

**Adjustment to Capacity Payment**

The firm capacity rates will be adjusted to reflect the impact that the location of the QS will have on FPL system reliability due to constraints imposed on the operation of FPL transmission tie lines.

Appendix III shows, for illustration purposes, the factors that would be used to adjust the firm capacity rate for different geographical areas. The actual adjustment would be determined on a case-by-case basis. The amount of such adjustment, as well as a binding contract rate for firm capacity, shall be provided to the QS within sixty days of FPL execution of the signed Standard Offer Contract.

**Option A - Fixed Value of Deferral Payments - Normal Capacity**

Payment schedules under this option are based on the value of a single year purchase with an in-service date of the Avoided Unit, as described in Appendix I. Once this option is selected, the current schedule of payments shall remain fixed and in effect throughout the term of the Standard Offer Contract.

(Continued on Sheet No. 10.302)

Issued by: ~~S. E. Romig~~<sup>Tiffany Cohen</sup>, Director, Rates and Tariffs  
Effective: ~~June 25, 2013~~



FLORIDA POWER & LIGHT COMPANY

Original Sheet No. 10.302

(Continued from Sheet No. 10.301)

**Option B - Fixed Value of Deferral Payments - Early Capacity**

Payment schedules under this option are based upon the early capital cost component of the value of a year-by-year deferral of the Company's Avoided Unit provided; however, that under no circumstances may payments begin before the QS is delivering firm capacity and energy to the Company pursuant to the terms of the Standard Offer Contract. When this option is selected, the capacity payments shall be made monthly commencing no earlier than the Capacity Delivery Date of the QS and calculated using the methodology shown on Appendix I.

The QS shall select the month and year in which the deliveries of firm capacity and energy to the Company are to commence and capacity payments are to start. The Company will provide the QS with a schedule of capacity payment rates based on the month and year in which the deliveries of firm capacity and energy are to commence and the term of the Standard Offer Contract as specified in Appendix E.

**Option C - Fixed Value of Deferral Payment - Levelized Capacity**

Payment schedules under this option are based upon the levelized capital cost component of the value of a year-by-year deferral of the Company's Avoided Unit. The capital portion of capacity payments under this option shall consist of equal monthly payments over the term of the Standard Offer Contract, calculated as shown on Appendix I. The fixed operation and maintenance portion of the capacity payments shall be equal to the value of the year-by-year deferral of fixed operation and maintenance expense associated with the Company's Avoided Unit. The methodology used to calculate this option is shown in Appendix I. The Company will provide the QS with a schedule of capacity payment rates based on the month and year in which the deliveries of firm capacity and energy are to commence and the term of the Standard Offer Contract as specified in Appendix E.

**Option D - Fixed Value of Deferral Payment - Early Levelized Capacity**

Payment schedules under this option are based upon the early levelized capital cost component of the value of a year-by-year deferral of the Company's Avoided Unit. The capital portion of the capacity payments under this option shall consist of equal monthly payments over the term of the Standard Offer Contract, calculated as shown on Appendix I. The fixed operation and maintenance expense shall be calculated as shown in Appendix I. At the option of the QS, payments for early levelized capacity shall commence at any time before the anticipated in-service date of the Company's Avoided Unit as specified in Appendix E, provided that the QS is delivering firm capacity and energy to the Company pursuant to the terms of the Standard Offer Contract. The Company will provide the QS with a schedule of capacity payment rates based on the month and year in which the deliveries of firm capacity and energy are to commence and the term of the Standard Offer Contract as specified in Appendix E.

**Option E - Flexible Payment Option**

Payment schedules under this option are based upon a payment stream elected by the QS consisting of the capital component of the Company's avoided unit. Payments can commence at any time after the actual in-service date of the QS and before the anticipated in-service date of the utility's avoided unit, as specified in Appendix E, provided that the QS is delivering firm capacity and energy to the Company pursuant to the terms of the Standard Offer Contract. Regardless of the payment stream elected by the QS, the cumulative present value of capital cost payments made to the QS over the term of the contract shall not exceed the cumulative present value of the capital cost payments which would have been made to the QS had such payments been made pursuant to FPSC Rule 25-17.0832(4)(g)1, F.A.C. Fixed operation and maintenance expense shall be calculated in conformance with Rule 25-17.0832(6), F.A.C. The Company will provide the QS with a schedule of capacity payment rates based on the information specified in Appendix E.

(Continued on Sheet No. 10.303)

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FLORIDA POWER & LIGHT COMPANY

Sixth Revised Sheet No. 10.303  
Cancels Fifth Revised Sheet No. 10.303

(Continued from Sheet No. 10.302)

**B. Energy Rates**

**(1) Payments Associated with As-Available Energy Costs prior to the In-Service Date of the Avoided Unit.**

Options A or B are available for payment of energy which is produced by the QS and delivered to the Company prior to the in-service date of the Avoided Unit. The QS shall indicate its selection in Appendix E, Once selected; an option shall remain in effect for the term of the Standard Offer Contract with the Company.

**Option A – Energy Payments based on Actual Energy Costs**

The energy rate, in cents per kilowatt-hour ( $\$/KWh$ ), shall be based on the Company's actual hourly avoided energy costs which are calculated by the Company in accordance with FPSC Rule 25-17.0825, F.A.C. Avoided energy costs include incremental fuel, identifiable operation and maintenance expenses, and an adjustment for line losses reflecting delivery voltage. The calculation of the Company's avoided energy costs reflects the delivery of energy from the region of the Company in which the Delivery Point of the QS is located. When economy transactions take place, the incremental costs are calculated as described in FPL's Rate Schedule COG-1.

The calculation of payments to the QS 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 purchases of energy from the QS by the Company for that hour. All purchases of energy shall be adjusted for losses from the point of metering to the Delivery Point.

**Option B – Energy Payments based on the year by year projection of As-Available energy costs**

The energy rate, in cents per kilowatt-hour ( $\$/KWh$ ), shall be based on the Company's year by year projection of system incremental fuel costs, prior to hourly economy sales to other utilities, based on normal weather and fuel market conditions (annual As-Available Energy Cost Projection which are calculated by the Company in accordance with FPSC Rule 25-17.0825, F.A.C. and with FPSC Rule 25-17.250(6) (a) F.A.C.) plus a fuel market volatility risk premium mutually agreed upon by the utility and the QS. Prior to the start of each applicable calendar year, the Company and the QS shall mutually agree on the fuel market volatility risk premium for the following calendar year, normally no later than November 15. The Company will provide its projection of the applicable annual As-Available Energy Cost prior to the start of the calendar year, normally no later than November 15 of each applicable calendar year. In addition to the applicable As-Available Energy Cost projection the energy payment will include identifiable operation and maintenance expenses, an adjustment for line losses reflecting delivery voltage and a factor that reflects in the calculation of the Company's Avoided Energy Costs the delivery of energy from the region of the Company in which the Delivery Point of the QS is located.

The calculation of payments to the QS shall be based on the sum, over all hours of the billing period, of the product of each hour's applicable Projected Avoided Energy Cost times the purchases of energy from the QS by the Company for that hour. All purchases of energy shall be adjusted for losses from the point of metering to the Delivery Point.

**(2) Payments Associated with Applicable Avoided Energy Costs after the In-Service Date of the Avoided Unit.**

Option C is available for payment of energy which is produced by the QS and delivered to the Company after the in-service date of the avoided unit. In addition, Option D is available to the QS which elects to fix a portion of the firm energy payment. The QS shall indicate its selection of Option D in Appendix E, once selected, Option D shall remain in effect for the term of the Standard Offer Contract.

**Option C- Energy Payments based on Actual Energy Costs starting on the in-service date of the Avoided Unit, as detailed in Appendix II.**

The calculation of payments to the QS for energy delivered to FPL on and after the in-service date of the Avoided Unit shall be the sum, over all hours of the Monthly Billing Period, of the product of (a) each hour's firm energy rate ( $\$/KWh$ ); and (b) the amount of energy (KWH) delivered to FPL from the Facility during that hour.

(Continued on Sheet No. 10.304)

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FLORIDA POWER & LIGHT COMPANY

Eighth Revised Sheet No. 10.304  
Cancels Seventh Revised Sheet No. 10.304

(Continued from Sheet No. 10.303)

For any Dispatch Hour the firm energy rate shall be, on an hour-by-hour basis, the Company's Avoided Unit Energy Cost. For any other period during which energy is delivered by the QS to FPL, the firm energy rate in cents per kilowatt hour (\$/KWh) shall be the following on an hour-by-hour basis: the lesser of (a) the as-available energy rate calculated by FPL in accordance with FPSC Rule 25-17.0825, FAC, and FPL's Rate Schedule COG-1, as they may each be amended from time to time and (b) the Company's Avoided Unit Energy Cost. The Company's Avoided Unit Energy Cost, in cents per kilowatt-hour (\$/KWh) shall be defined as the product of: (a) the fuel price in \$/mmBTU as determined from gas prices published in Platts Inside FERC Gas Market Report, first of the month posting for Florida Gas Transmission Zone 3, plus all charges, surcharges and percentages that are in effect from time to time for service under Gulfstream Natural Gas System's Rate Schedule FTS; and (b) the average annual heat rate of the Avoided Unit, plus (c) an additional payment for variable operation and maintenance expenses which will be escalated based on the actual Producer Price Index. All energy purchases shall be adjusted for losses from the point of metering to the Delivery Point. The calculation of the Company's avoided energy cost reflects the delivery of energy from the geographical area of the Company in which the Delivery Point of the QS is located.

Option D- Fixed Firm Energy Payments Starting as early as the In-Service Date of the QS Facility

The calculation of payments to the QS for energy delivered to FPL may include an adjustment at the election of the QS in order to implement the provisions of Rule 25-17.250 (6) (b), F.A.C. Subsequent to the determination of full avoided cost and subject to the provisions of Rule 25-17.0832(3) (a) through (d), F.A.C., a portion of the base energy costs associated with the avoided unit, mutually agreed upon by the utility and renewable energy generator, shall be fixed and amortized on a present value basis over the term of the contract starting, at the election of the QS, as early as the in-service date of the QS. "Base energy costs associated with the avoided unit" means the energy costs of the avoided unit to the extent the unit would have operated. The portion of the base energy costs mutually agreed to by the Company and the QS shall be specified in Appendix E. The Company will provide the QS with a schedule of "Fixed Energy Payments" over the term of the Standard Offer Contract based on the applicable information specified in Appendix E.

ESTIMATED AS-AVAILABLE ENERGY COST

As required in Section 25-17.0832, F.A.C. as-available energy cost projections until the in-service date of the avoided unit will be provided within 30 days of receipt by FPL of a written request for such projections by any interested person.

ESTIMATED UNIT FUEL COST

As required in Section 25-17.0832, F.A.C. the estimated unit fuel costs associated with the Company's Avoided Unit and based on current estimates of the price of natural gas will be provided within 30 days of a written request for such an estimate.

(Continued on Sheet No. 10.305)

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**FLORIDA POWER & LIGHT COMPANY**

Sixth Revised Sheet No. 10.305  
Cancels Fifth Revised Sheet No. 10.305

(Continued from Sheet No. 10.304)

**DELIVERY VOLTAGE ADJUSTMENT**

Energy payments to a QS within the Company's service territory shall be adjusted according to the delivery voltage by the multipliers provided in Appendix II.

**PERFORMANCE CRITERIA**

Payments for Firm Capacity are conditioned on the QS's ability to maintain the following performance criteria:

**A. Capacity Delivery Date**

The Capacity Delivery Date shall be no later than the projected in-service date of the Company's Avoided Unit, as detailed in Appendix II.

**B. Availability and Capacity Factor**

The Facility's availability and capacity factor are used in the determination of firm capacity payments through a performance based calculation as detailed in Appendix B to the Company's Standard Offer Contract.

**METERING REQUIREMENTS**

A QS within the territory served by the Company shall be required to purchase from the Company hourly recording meters to measure their energy deliveries to the Company. Energy purchases from a QS outside the territory of the Company shall be measured as the quantities scheduled for interchange to the Company by the entity delivering Firm Capacity and Renewable Energy to the Company.

For the purpose of this Schedule, the on-peak hours shall be those hours occurring April 1 through October 31 Mondays through Fridays, from 12 noon to 9:00 pm. excluding Memorial Day, Independence Day and Labor Day; and November 1 through March 31 Mondays through Fridays from 6:00 a.m. to 10:00 a.m. and 6:00 p.m. to 10:00 p.m. prevailing Eastern time excluding Thanksgiving Day, Christmas Day, and New Years Day.. FPL shall have the right to change such On-Peak Hours by providing the QS a minimum of thirty calendar days' advance written notice.

**BILLING OPTIONS**

A QS, upon entering into a Standard Offer Contract for the sale of firm capacity and energy or prior to delivery of as-available energy, may elect to make either simultaneous purchases from and sales to the Company, or net sales to the Company; provided, however, that no such arrangement shall cause the QS to sell more than the Facility's net output. A decision on billing methods may only be changed: 1) when a QS selling as-available energy enters into a Standard Offer Contract for the sale of firm capacity and energy; 2) when a Standard Offer Contract expires or is lawfully terminated by either the QS or the Company; 3) when the QS is selling as-available energy and has not changed billing methods within the last twelve months; 4) when the election to change billing methods will not contravene this Tariff or the contract between the QS and the Company.

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

Payments due a QS will be made monthly and normally by the twentieth business day following the end of the billing period. The kilowatt-hours sold by the QS and the applicable avoided energy rates at which payments are being made shall accompany the payment to the QS.

A statement covering the charges and payments due the QS is rendered monthly, and payment normally is made by the twentieth business day following the end of the billing period.

(Continued on Sheet No. 10.306)

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**FLORIDA POWER & LIGHT COMPANY**

Seventh Revised Sheet No. 10.306  
Cancels Sixth Revised Sheet No. 10.306

(Continued from Sheet No. 10.305)

**CHARGES TO ENERGY FACILITY**

The QS 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. Customer Charges:**

Monthly customer charges for meter reading, billing and other applicable administrative costs as per applicable Customer Rate Schedule.

**B. Interconnection Charge for Non-Variable Utility Expenses**

The QS shall bear the cost required for interconnection, including the metering. The QS shall have the option of (i) payment in full for the interconnection costs including the time value of money during the construction of the interconnection facilities and providing a Bond, Letter of Credit or comparable assurance of payment acceptable to the Company adequate to cover the interconnection cost estimates, (ii) payment of monthly invoices from the Company for actual costs progressively incurred by the Company in installing the interconnection facilities, or (iii) upon a showing of credit worthiness, making equal monthly installment payments over a period no longer than thirty-six (36) months toward the full cost of interconnection. In the latter case, the Company shall assess interest at the rate then prevailing for thirty (30) day highest grade commercial paper, such rate to be specified by the Company thirty (30) days prior to the date of each installment payment by the QS.

**C. Interconnection Charge for Variable Utility Expenses**

The QS shall be billed monthly for the variable utility expenses associated with the operation and maintenance of the interconnection facilities. These include (a) the Company's inspections of the interconnection facilities and (b) maintenance of any equipment beyond that which would be required to provide normal electric service to the QS if no sales to the Company were involved.

In lieu of payment for actual charges, the QS may pay a monthly charge equal to a percentage of the installed cost of the interconnection facilities as provided in Appendix II.

**D. Taxes and Assessments**

In the event that FPL becomes liable for additional taxes, including interest and/or penalties arising from an Internal Revenue Service's determination, through audit, ruling or other authority, that FPL's payments to the QS for capacity under options B, C, D, E or for energy pursuant to the Fixed Firm Energy Payment Option D are not fully deductible when paid (additional tax liability), FPL may bill the QS monthly for the costs, including carrying charges, interest and/or penalties, associated with the fact that all or a portion of these capacity payments are not currently deductible for federal and/or state income tax purposes. FPL, at its option, may offset these costs against amounts due the QS hereunder. These costs would be calculated so as to place FPL in the same economic position in which it would have been if the entire early, levelized or early levelized capacity payments or the Fixed Firm Energy Payment had been deductible in the period in which the payments were made. If FPL 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 FPL.

(Continued on Sheet No. 10.307)

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**FLORIDA POWER & LIGHT COMPANY**

Original Sheet No. 10.307

(Continued from Sheet No. 10.306)

**TERMS OF SERVICE**

- (1) It shall be the QS's responsibility to inform the Company of any change in its electric generation capability.
- (2) Any electric service delivered by the Company to a QS located in the Company's service area shall be subject to the following terms and conditions:
  - (a) A QS shall be metered separately and billed under the applicable retail rate schedule(s), whose terms and conditions shall pertain.
  - (b) A security deposit will be required in accordance with FPSC Rules 25-17.082(5) and 25-6.097, F.A.C., and the following:
    - (i) In the first year of operation, the security deposit should be based upon the singular month in which the QS's projected purchases from the Company exceed, by the greatest amount, the Company's estimated purchases from the QS. The security deposit should be equal to twice the amount of the difference estimated for that month. The deposit is required upon interconnection.
    - (ii) For each year thereafter, a review of the actual sales and purchases between the QS and the Company will be conducted to determine the actual month of maximum difference. The security deposit should be adjusted to equal twice the greatest amount by which the actual monthly purchases by the QS exceed the actual sales to the Company in that month.
  - (c) The Company shall specify the point of interconnection and voltage level.
  - (d) The QS must enter into an interconnection agreement with the Company which will, among other things, specify safety and reliability standards for the interconnection to the Company's system. In most instances, the Company's filed Interconnection Agreement for Qualifying Facilities will be used; however, special features of the QS or its interconnection to the Company's facilities may require modifications to this Interconnection Agreement or the safety and reliability standards contained therein.
- (3) Service under this rate schedule is subject to the rules and regulations of the Company and the Florida Public Service Commission.

**SPECIAL PROVISIONS**

- (1) Special contracts deviating from the above standard rate schedule are allowable provided the Company agrees to them and they are approved by the Florida Public Service Commission.

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FLORIDA POWER & LIGHT COMPANY

Original Sheet No. 10.308

**APPENDIX I  
TO RATE SCHEDULE QS-2  
CALCULATION OF VALUE OF DEFERRAL PAYMENTS**

**APPLICABILITY**

Appendix I provides a detailed description of the methodology used by the Company to calculate the monthly values of deferring or avoiding the Company's Avoided Unit identified in Schedule QS-2. When used in conjunction with the current FPSC-approved cost parameters associated with the Company's Avoided Unit contained in Appendix II, a QS may determine the applicable value of deferral capacity payment rate associated with the timing and operation of its particular facility should the QS enter into a Standard Offer Contract with the Company.

**CALCULATION OF VALUE OF DEFERRAL OPTION A**

FPSC Rule 25-17.0832(5) specifies that avoided capacity costs, in dollars per kilowatt per month, associated with capacity sold to a utility by a QS pursuant to the Company's Standard Offer Contract shall be defined as the year-by-year value of deferral of the Company's Avoided Unit. The year-by-year value of deferral shall be the difference in revenue requirements associated with deferring the Company's Avoided Unit one year, and shall be calculated as follows:

Where, for a one year deferral:

- $VAC_n$  = utility's monthly value of avoided capacity and O & M, in dollars per kilowatt per month, for each month of year  $n$ ;
- $K$  = present value of carrying charges for one dollar of investment over  $L$  years with carrying charges computed using average annual rate base and assumed to be paid at the middle of each year and present valued to the middle of the first year;
- $R$  =  $(1 + ip) / (1 + r)$ ;
- $I_n$  = total direct and indirect cost, in mid-year dollars per kilowatt including AFUDC but excluding CWIP, of the Company's Avoided Unit with an in-service date of year  $n$ , including all identifiable and quantifiable costs relating to the construction of the Company's Avoided Unit which would have been paid had the Unit been constructed;
- $O_n$  = total fixed operation and maintenance expense for the year  $n$ , in mid-year dollars per kilowatt per year, of the Company's Avoided Unit;
- $i_p$  = annual escalation rate associated with the plant cost of the Company's Avoided Unit(s);
- $i_o$  = annual escalation rate associated with the operation and maintenance expense of the Company's Avoided Unit(s);
- $r$  = annual discount rate, defined as the utility's incremental after-tax cost of capital;
- $L$  = expected life of the Company's Avoided Unit(s); and
- $n$  = year for which the Company's Avoided Unit(s) is (are) deferred starting with its (their) original anticipated in-service date(s) and ending with the termination of the Company's Standard Offer Contract.

(Continued on Sheet No. 10.309)

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FLORIDA POWER & LIGHT COMPANY

Original Sheet No. 10.309

(Continued from Sheet No. 10.308)

**CALCULATION OF FIXED VALUE OF DEFERRAL PAYMENTS – EARLY CAPACITY-OPTION B**

Normally, payments for firm capacity shall not commence until the in-service date of the Company's Avoided Unit(s). At the option of the QS, however, the Company may begin making payments for early capacity consisting of the capital cost component of the value of a year-by-year deferral of the Company's Avoided Unit starting as early as the in-service date of the QS facility. When such payments for early capacity are elected, the avoided capital cost component of capacity payments shall be paid monthly commencing no earlier than the Capacity Delivery Date of the QS, and shall be calculated as

$$A_m = A_c \frac{(1 + i_p)^{m-1}}{12} + A_o \frac{(1 + i_o)^{m-1}}{12} \text{ for } m = 1 \text{ to } t$$

follows:

Where:

- $A_m$  = monthly payments to be made to the QS for each month of the contract year  $n$ , in dollars per kilowatt per month in which QS delivers capacity pursuant to the early capacity option;
- $i_p$  = annual escalation rate associated with the plant cost of the Company's Avoided Unit(s);
- $i_o$  = annual escalation rate associated with the operation and maintenance expense of the Company's Avoided Unit(s);
- $m$  = year for which the fixed value of deferral payments under the early capacity option are made to a QS, starting in year one and ending in the year  $t$ ;
- $t$  = the term, in years, of the Standard Offer Contract;

$$A_c = F / [(1 - R)/(1 - R^t)]$$

Where:

- $F$  = the cumulative present value, in the year that the contractual payments will begin, of the avoided capital cost component of capacity payments which would have been made had capacity payments commenced with the anticipated in-service date of the Company's Avoided Unit(s);
- $R$  =  $(1 + i_p)/(1 + r)$
- $r$  = annual discount rate, defined as the Company's incremental after-tax cost of capital; and

$$A_o = G / [(1 - R)/(1 - R^t)]$$

Where:

- $G$  = The cumulative present value, in the year that the contractual payments will begin, of the avoided fixed operation and maintenance expense component of capacity payments which would have been made had capacity payments commenced with the anticipated in-service date of the Company's Avoided Unit(s).
- $R$  =  $(1 + i_o)/(1 + r)$

The currently approved parameters applicable to the formulas above are found in Appendix II.

(Continued on Sheet No. 10.310)

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FLORIDA POWER & LIGHT COMPANY

Original Sheet No. 10.310

(Continued from Sheet No. 10.309)

**CALCULATION OF FIXED VALUE OF DEFERRAL PAYMENTS – LEVELIZED AND EARLY LEVELIZED CAPACITY –  
OPTION C & OPTION D, RESPECTIVELY**

Monthly fixed value of deferral payments for levelized and early levelized capacity shall be calculated as follows:

$$P_L = \frac{F}{12} \times \frac{r}{1 - (1 + r)^{-t}} + O$$

Where:

- $P_L$  = the monthly levelized capacity payment, starting on or prior to the in-service date of the Company's Avoided Unit(s);
- $F$  = the cumulative present value, in the year that the contractual payments will begin, of the avoided capital cost component of the capacity payments which would have been made had the capacity payments not been levelized;
- $r$  = the annual discount rate, defined as the Company's incremental after-tax cost of capital;
- $t$  = the term, in years, of the Standard Offer Contract;
- $O$  = the monthly fixed operation and maintenance component of the capacity payments, calculated in accordance with calculation of the fixed value of deferral payments for the levelized capacity or the early levelized capacity options.

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FLORIDA POWER & LIGHT COMPANY

~~Twelfth~~<sup>Thirteenth</sup> Revised Sheet No. 10.311  
Cancels ~~Eleventh~~<sup>Twelfth</sup> Revised Sheet No. 10.311

APPENDIX II

TO RATE SCHEDULE QS-2  
AVOIDED ~~UNPLANNED~~ POWER PURCHASE INFORMATION

The Company's Avoided Unit has been determined to be a ~~1,752-MW Combined-Cycle Unit~~ <sup>325 MW Summer Power Purchase Agreement</sup> with an in-service date of June 1, ~~2028~~<sup>2019</sup> and a ~~contract~~ heat rate of ~~6,293~~<sup>13,000</sup> Btu/kWh.

EXAMPLE STANDARD OFFER CONTRACT AVOIDED CAPACITY PAYMENTS  
FOR A CONTRACT TERM OF TEN YEARS FROM THE IN-SERVICE DATE OF THE AVOIDED UNIT  
(\$/KW/MONTH)

Contract Year	Option A Normal Capacity Payment	Option B Early Capacity Payment	Option C Levelized Capacity Payment	Option D Early Levelized Capacity Payment
<del>2024</del> <sup>2018</sup>	\$ <del>—</del> <sup>0</sup>	\$ <del>4,230.95</del>	\$ <del>-</del> <sup>0</sup>	\$ <del>4,840.21</del>
<del>2025</del> <sup>2019</sup>	\$ <del>2.00</del>	\$ <del>4,330.97</del>	\$ <del>0.23</del>	\$ <del>4,840.21</del>
<del>2026</del> <sup>2020</sup>	\$ <del>—</del> <sup>0</sup>	\$ <del>4,440</del>	\$ <del>0.23</del>	\$ <del>4,840.21</del>
<del>2027</del> <sup>2021</sup>	\$ <del>—</del> <sup>0</sup>	\$ <del>4,550</del>	\$ <del>—</del> <sup>0.23</sup>	\$ <del>4,840.21</del>
<del>2022</del>	\$ <del>0</del>	\$ <del>0</del>	\$ <del>0.23</del>	\$ <del>0.21</del>
<del>2023</del>	\$ <del>0</del>	\$ <del>0</del>	\$ <del>0.23</del>	\$ <del>0.21</del>
<del>2024</del>	\$ <del>0</del>	\$ <del>0</del>	\$ <del>0.23</del>	\$ <del>0.21</del>
<del>2025</del>	\$ <del>0</del>	\$ <del>0</del>	\$ <del>0.23</del>	\$ <del>0.21</del>
<del>2026</del>	\$ <del>0</del>	\$ <del>0</del>	\$ <del>0.23</del>	\$ <del>0.21</del>
<del>2027</del>	\$ <del>0</del>	\$ <del>0</del>	\$ <del>0.23</del>	\$ <del>0.21</del>
2028	\$ <del>7,260</del>	\$ <del>4,660</del>	\$ <del>8.04</del> <sup>0.23</sup>	\$ <del>4,840.21</del>
2029	\$ <del>7,140</del>	\$ <del>4,780</del>	\$ <del>8.04</del> <sup>0.23</sup>	\$ <del>4,840.21</del>
2030	\$ <del>0</del> <sup>7.62</sup>	\$ <del>4,900</del>	\$ <del>8.04</del> <sup>0.23</sup>	\$ <del>4,840.21</del>
2031	\$ <del>0</del> <sup>7.84</sup>	\$ <del>5,020</del>	\$ <del>8.04</del> <sup>0.23</sup>	\$ <del>4,840.21</del>
2032	\$ <del>8.04</del> <sup>0</sup>	\$ <del>5,150</del>	\$ <del>8.04</del> <sup>0.23</sup>	\$ <del>4,840.21</del>
<del>2033</del>	\$ <del>8.21</del>	\$ <del>5.28</del>	\$ <del>8.04</del>	\$ <del>1.84</del>
<del>2034</del>	\$ <del>8.42</del>	\$ <del>5.44</del>	\$ <del>8.04</del>	\$ <del>1.84</del>
<del>2035</del>	\$ <del>8.62</del>	\$ <del>5.54</del>	\$ <del>8.04</del>	\$ <del>1.84</del>
<del>2036</del>	\$ <del>8.84</del>	\$ <del>5.68</del>	\$ <del>8.04</del>	\$ <del>1.84</del>
<del>2037</del>	\$ <del>9.06</del>	\$ <del>5.82</del>	\$ <del>8.04</del>	\$ <del>1.84</del>
<del>2038</del>	\$ <del>9.29</del>	\$ <del>5.97</del>	\$ <del>8.04</del>	\$ <del>1.84</del>

ESTIMATED AS-AVAILABLE ENERGY COST

For informational purposes, the most recent estimated incremental avoided energy costs for the next ten years will be provided within thirty (30) days of written request.

ESTIMATED UNIT FUEL COSTS (\$/MMBtu):

The most recent estimated unit fuel costs for the Company's avoided unit will be provided within thirty (30) days of written request.

Issued by: ~~S. E. Romig~~<sup>Tiffany Cohen</sup>, Director, Rates and Tariffs  
Effective: ~~February 19, 2018~~

FLORIDA POWER & LIGHT COMPANY

~~Fifth~~<sup>Sixth</sup> Revised Sheet No. 10.311.1  
Cancels ~~Fourth~~<sup>Fifth</sup> Sheet No. 10.311.1

**PLANNED POWER PURCHASED AGREEMENT FIXED VALUE OF DEFERRAL PAYMENTS - NORMAL CAPACITY OPTION  
PARAMETERS**

Where, for a one year deferral: Value

$VAC_m$	=	Company's value of avoided capacity and O&M, in dollars per kilowatt per month, during month m;	<del>\$7,256,000</del>
$K$	=	present value of carrying charges for one dollar of investment over $L$ years with carrying charges computed using average annual rate base and assumed to be paid at the middle of each year and present valued to the middle of the first year;	<del>4.54251</del>
$I_a$	=	total direct and indirect cost, in mid-year dollars per kilowatt including AFUDC but excluding CWIP, of the Company's Avoided Unit with an in-service date of year $n$ ;	<del>\$840.18NA</del>
$O_a$	=	total fixed operation and maintenance expense, for the year $n$ , in mid-year dollars per kilowatt per year, of the Company's Avoided Unit;	<del>\$45.59NA</del>
$i_p$	=	annual escalation rate associated with the plant cost of the Company's Avoided Unit;	2.50%
$i_o$	=	annual escalation rate associated with the operation and maintenance expense of the Company's Avoided Unit;	2.50%
$r$	=	annual discount rate, defined as the Company's incremental after-tax cost of capital;	<del>7.577.76%</del>
$L$	=	expected life of the Company's Avoided Unit;	<del>401</del>
$n$	=	year for which the Company's Avoided Unit is deferred starting with its original anticipated in-service date and ending with the termination of the Standard Offer Contract.	<del>2028</del> <sup>2019</sup>

**FIXED VALUE OF DEFERRAL PAYMENTS - EARLY CAPACITY OPTION PARAMETERS**

$A_m$	=	monthly capacity payments to be made to the QS starting on the year the QS elects to start receiving early capacity payments, in dollars per kilowatt per month;	*
$i_p$	=	annual escalation rate associated with the plant cost of the Company's Avoided Unit;	2.50%
$i_o$	=	annual escalation rate associated with the operation and maintenance expense of the Company's Avoided Unit;	2.50%
$n$	=	year for which early capacity payments to a QS are to begin; (at the election of the QS early capacity payments may commence anytime after the actual in-service date of the QS facility and before the anticipated in-service date of the Company's avoided unit)	*
$F$	=	the cumulative present value of the avoided capital cost component of capacity payments which would have been made had capacity payments commenced with the anticipated in-service date of the Company's Avoided Unit and continued for a period of 10 years;	<del>\$657.62NA</del>
$r$	=	annual discount rate, defined as the Company's incremental after-tax cost of capital;	<del>7.577.76%</del>
$t$	=	the term, in years, of the Standard Offer Contract for the purchase of firm capacity commencing in the year the QS elects to start receiving early capacity payments prior to the in-service date of the Company's Avoided Unit;	*
$G$	=	the cumulative present value of the avoided fixed operation and maintenance expense component of capacity payments which would have been made had capacity payments commenced with the anticipated in-service date of the Company's Avoided Unit and continued for a period of 10 years.	<del>\$117.765</del>

50

\*From Appendix E

Issued by: ~~S. E. Romig~~<sup>Tiffany Cohen</sup>, Director, Rates and Tariffs  
Effective: ~~February 19, 2018~~



FLORIDA POWER & LIGHT COMPANY

Original Sheet No. 10.311.2

**APPENDIX II  
TO RATE SCHEDULE QS-2  
2028 AVOIDED UNIT INFORMATION**

The Company's Avoided Unit has been determined to be a 1,778 MW Combined Cycle Unit with an in-service date of June 1, 2028 and a heat rate of 6,293 Btu/kWh.

**EXAMPLE STANDARD OFFER CONTRACT AVOIDED CAPACITY PAYMENTS  
FOR A CONTRACT TERM OF TEN YEARS FROM THE IN-SERVICE DATE OF THE AVOIDED UNIT  
(\$/KW/MONTH)**

	Option A	Option B	Option C	Option D
Contract Year	Normal Capacity Payment	Early Capacity Payment	Levelized Capacity Payment	Early Levelized Capacity Payment
2024	\$ 0	\$ 3.97	\$ 0	\$ 4.55
2025	\$ 0	\$ 4.07	\$ 0	\$ 4.55
2026	\$ 0	\$ 4.17	\$ 0	\$ 4.55
2027	\$ 0	\$ 4.28	\$ 0	\$ 4.55
2028	\$ 6.85	\$ 4.38	\$ 7.56	\$ 4.55
2029	\$ 7.02	\$ 4.49	\$ 7.56	\$ 4.55
2030	\$ 7.20	\$ 4.61	\$ 7.56	\$ 4.55
2031	\$ 7.38	\$ 4.72	\$ 7.56	\$ 4.55
2032	\$ 7.56	\$ 4.84	\$ 7.56	\$ 4.55
2033	\$ 7.75	\$ 4.96	\$ 7.56	\$ 4.55
2034	\$ 7.95	\$ 5.08	\$ 7.56	\$ 4.55
2035	\$ 8.15	\$ 5.21	\$ 7.56	\$ 4.55
2036	\$ 8.35	\$ 5.34	\$ 7.56	\$ 4.55
2037	\$ 8.56	\$ 5.48	\$ 7.56	\$ 4.55
2038	\$ 8.77	\$ 5.61	\$ 7.56	\$ 4.55

**ESTIMATED AS-AVAILABLE ENERGY COST**

For informational purposes, the most recent estimated incremental avoided energy costs for the next ten years will be provided within thirty (30) days of written request.

**ESTIMATED UNIT FUEL COSTS (\$/MMBtu):**

The most recent estimated unit fuel costs for the Company's avoided unit will be provided within thirty (30) days of written request.

Issued by: Tiffany Cohen, Director, Rates and Tariffs  
Effective:



FLORIDA POWER & LIGHT COMPANY

Original Sheet No. 10.311.3

2028 AVOIDED UNIT FIXED VALUE OF DEFERRAL PAYMENTS - NORMAL CAPACITY OPTION PARAMETERS

Where, for a one year deferral:		Value
$VAC_m$	= Company's value of avoided capacity and O&M, in dollars per kilowatt per month, during month m;	\$6.852
$K$	= present value of carrying charges for one dollar of investment over L years with carrying charges computed using average annual rate base and assumed to be paid at the middle of each year and present valued to the middle of the first year;	1.4413
$I_n$	= total direct and indirect cost, in mid-year dollars per kilowatt including AFUDC but excluding CWIP, of the Company's Avoided Unit with an in-service date of year n;	\$822.98
$O_n$	= total fixed operation and maintenance expense, for the year n, in mid-year dollars per kilowatt per year, of the Company's Avoided Unit;	\$15.28
$i_p$	= annual escalation rate associated with the plant cost of the Company's Avoided Unit;	2.50%
$i_o$	= annual escalation rate associated with the operation and maintenance expense of the Company's Avoided Unit;	2.50%
$r$	= annual discount rate, defined as the Company's incremental after-tax cost of capital;	7.76%
$L$	= expected life of the Company's Avoided Unit;	40
$n$	= year for which the Company's Avoided Unit is deferred starting with its original anticipated in-service date and ending with the termination of the Standard Offer Contract.	2028

FIXED VALUE OF DEFERRAL PAYMENTS - EARLY CAPACITY OPTION PARAMETERS

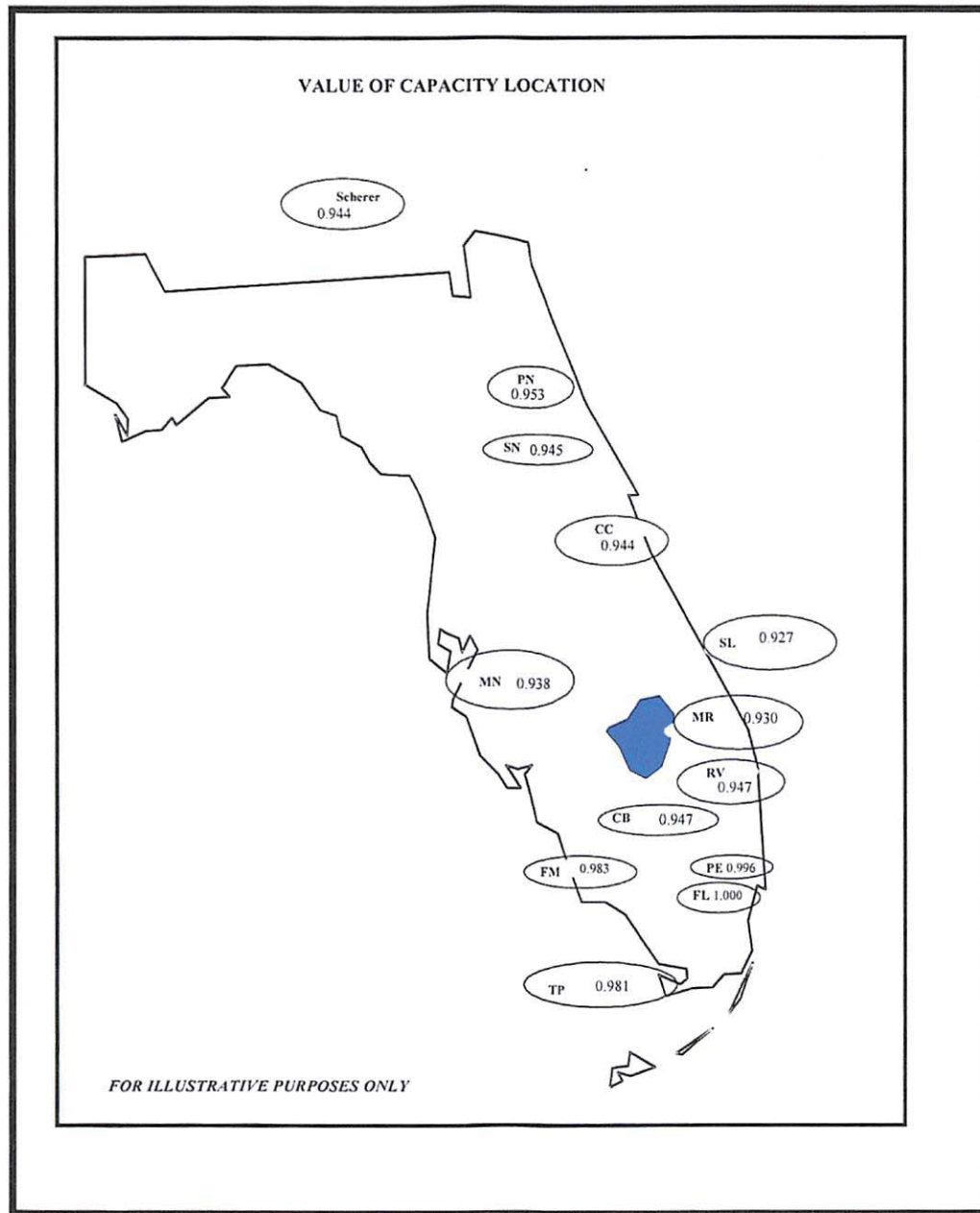
$A_m$	= monthly capacity payments to be made to the QS starting on the year the QS elects to start receiving early capacity payments, in dollars per kilowatt per month;	*
$i_p$	= annual escalation rate associated with the plant cost of the Company's Avoided Unit;	2.50%
$i_o$	= annual escalation rate associated with the operation and maintenance expense of the Company's Avoided Unit;	2.50%
$n$	= year for which early capacity payments to a QS are to begin; (at the election of the QS early capacity payments may commence anytime after the actual in-service date of the QS facility and before the anticipated in-service date of the Company's avoided unit)	*
$F$	= the cumulative present value of the avoided capital cost component of capacity payments which would have been made had capacity payments commenced with the anticipated in-service date of the Company's Avoided Unit and continued for a period of 10 years;	\$615.50
$r$	= annual discount rate, defined as the Company's incremental after-tax cost of capital;	7.76%
$t$	= the term, in years, of the Standard Offer Contract for the purchase of firm capacity commencing in the year the QS elects to start receiving early capacity payments prior to the in-service date of the Company's Avoided Unit;	*
$G$	= the cumulative present value of the avoided fixed operation and maintenance expense component of capacity payments which would have been made had capacity payments commenced with the anticipated in-service date of the Company's Avoided Unit and continued for a period of 10 years.	\$114.38

\*From Appendix E

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FLORIDA POWER & LIGHT COMPANY

Sixth Revised Sheet No. 10.312  
Cancels Fifth Revised Sheet No. 10.312



Issued by: S.E. Romig, Director, Rates and Tariffs  
Effective: July 13, 2017

FLORIDA POWER & LIGHT COMPANY

Second Revised Sheet No. 10.313  
Cancels First Revised Sheet No. 10.313

APPENDIX B  
TO THE STANDARD OFFER CONTRACT  
FOR THE PURCHASE OF FIRM CAPACITY AND ENERGY  
FROM RENEWABLE ENERGY FACILITIES  
OR QUALIFYING FACILITIES WITH A DESIGN CAPACITY OF 100 KW OR LESS  
PAY FOR PERFORMANCE PROVISIONS MONTHLY CAPACITY PAYMENT CALCULATION

1. Monthly Capacity Payments (MCP) for each Monthly Billing Period shall be computed according to the following:
    - A. In the event that the Annual Capacity Billing Factor ("ACBF"), as defined below, is less than 80%, then no Monthly Capacity Payment shall be due. That is:  

$$MCP = 0$$
    - B. In the event that the ACBF is equal to or greater than 80% but less than 94%, then the Monthly Capacity Payment shall be calculated by using the following formula:  

$$MCP = BCP \times [1 + 4 \times (ACBF - 94\%)] \times CC$$
    - C. In the event that the ACBF is equal to or greater than 94%, then the Monthly Capacity Payment shall be calculated by using the following formula:  

$$MCP = BCP \times CC$$
- Where:
- MCP = Monthly Capacity Payment in dollars.
- BCP = Base Capacity Payment in \$/KW/Month as specified in FPL's Rate Schedule QS-2.
- CC = Committed Capacity in KW.
- ACBF = Annual Capacity Billing Factor. This factor is calculated using the 12 months rolling average of the Monthly Capacity Factor. This 12 month rolling average shall be defined as the sum of the 12 consecutive Monthly Capacity Factors preceding the date of calculation, divided by 12. During the first 12 consecutive Monthly Billing Periods, commencing with the first Monthly Billing Period in which Capacity payments are to be made, the calculation of the Annual Capacity Billing Factor shall be performed as follows: (a) during the first Monthly Billing Period, the Annual Capacity Billing Factor shall be equal to the Monthly Capacity Factor; (b) thereafter, the calculation of the Annual Capacity Billing Factor shall be computed by dividing the sum of the Monthly Capacity Factors during the first year's Monthly Billing Periods in which Capacity payments are to be made by the number of Monthly Billing Periods which have elapsed. This calculation shall be performed at the end of each Monthly Billing Period until enough Monthly Billing Periods have elapsed to calculate a true 12-month rolling average Annual Capacity Billing Factor. Periods during which the Facility has temporarily set its Committed Capacity equal to 0 KW due to a Force Majeure event pursuant to Section 16 shall be excluded from the applicable capacity factor calculation.
- MCF = Monthly Capacity Factor. The sum of (i) the Hourly Factors of the Non-Dispatch Hours plus (ii) the Hourly Factors of the Dispatch Hours or the Hourly factors of the hours when FPL requested reduced deliveries pursuant to Sections 8.4.6 and 8.4.8 (Reduced Delivery Hour); divided by the number of hours in the Monthly Billing Period.
- HFNDH = Hourly Factor of a Non-Dispatch Hour. The energy received during the hour divided by the Committed Capacity. For purposes of calculating the Hourly Factor of a Non-Dispatch Hour the energy received shall not exceed the Committed Capacity.
- HFDH = Hourly Factor of a Dispatch Hour or a Reduced Delivery Hour. The scheduled energy received divided by the scheduled energy requested. For purposes of calculating the Hourly Factor of a Dispatch Hour or the Hourly Factor of a Reduced Delivery Hour the scheduled energy received shall not exceed the scheduled energy requested.
- On-Peak Hours = Those hours occurring April 1 through October 31 Mondays through Fridays, from 12 noon to 9:00 p.m. excluding Memorial Day, Independence Day and Labor Day; and November 1 through March 31 Mondays through Fridays from 6:00 a.m. to 10:00 a.m. and 6:00 p.m. to 10:00 p.m. prevailing Eastern time excluding Thanksgiving Day, Christmas Day and New Year's Day. FPL shall have the right to change such On-Peak Hours by providing the QS a minimum of thirty calendar days' advance notice.
- Monthly Billing Period = The period beginning on the first calendar day of each calendar month, except that the initial Monthly Billing Period shall consist of the period beginning 12:01 a.m. on the Capacity Delivery Period Date and ending with the last calendar day of such month.

Scheduled Energy and Dispatch Hours are as defined in Section 8.4.7 of the Standard Offer Contract.

Issued by: S. E. Romig, Director, Rates and Tariffs  
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FLORIDA POWER & LIGHT COMPANY

Original Sheet No. 10.314

APPENDIX C  
TO THE STANDARD OFFER CONTRACT  
TERMINATION FEE

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 termination (or month of calculation, as the case may be), computed according to the following formula:

Termination Fee = Termination Fee applicable to Capacity Payment Option plus Termination Fee applicable to Fixed Firm Energy Option

Termination Fee applicable to Capacity Payment Options B, C, D and E

$$\sum_{i=1}^n (MCP_i - MCPC_i) \times r^{(i-1)}$$

with:  $MCPC_i = 0$  for all periods prior to the in-service date of the Company's Avoided Unit;

where:

- i = number of the Monthly Billing Period commencing with the Capacity Delivery Date (i.e., the month in which Capacity Delivery Date occurs = 1; the month following the 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 = the future value of an amount factor necessary to compound a sum monthly so the annual percentage rate derived will equal FPL's incremental after-tax avoided cost of capital (defined as r in QS-2). For any Monthly Billing Period in which  $MCPC_i$  is greater than  $MCP_i$ , r shall equal 1.
- $MCP_i$  = Monthly Capacity Payment paid to QS corresponding to the Monthly Billing Period i, calculated in accordance with Appendix B.
- $MCPC_i$  = Monthly Capacity Payment for Option A corresponding to the Monthly Billing Period i, calculated in accordance with QS-2

In the event that for any Monthly Billing Period, the computation of the value of the Capacity Payment Termination Fee for such Monthly Billing Period (as set forth above) yields a value equal to or greater than zero, the amount of the Capacity Payment Termination Fee shall be increased by the amount of such value.

In the event that for any Monthly Billing Period, the computation of the value of the Capacity Payment Termination Fee for such Monthly Billing Period (as set forth above) yields a value less than zero, the amount of the Capacity Payment 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 Capacity Billing Factor (ACBF), as defined in Appendix B is less than 80%, then the Initial Reduction Value shall be adjusted to equal zero (Reduction Value = 0), and the Capacity Payment 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 Capacity Billing Factor (ACBF), as defined in Appendix B, is equal to or greater than 80% but less than 97%, then the Reduction Value shall be determined as follows:

$$\text{Reduction Value} = \text{Initial Reduction Value} \times [0.04 \times (\text{ACBF} - 72)]$$

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

In no event shall FPL be liable to the QS at any time for any amount by which the Capacity Payment Termination Fee, adjusted in accordance with the foregoing, is less than zero (0).

Termination Fee applicable to the Fixed Firm Energy Payment Option D

Prior to in-service date of avoided unit:

The Termination Fee for the Fixed Firm Energy Option shall be equal to the cumulative sum of the Fixed Firm Energy Payments made to the QS pursuant to Option D, starting with the in-service date of the QS facility, for each billing cycle. Such number shall reach the maximum amount on the billing cycle immediately preceding the billing cycle associated with the in-service date of the Avoided Unit.

After in-service date of avoided unit:

The Termination Fee shall be decreased each billing cycle following the in-service date of the avoided unit by an amount equal to the difference between the projected Fixed Energy Cost that was used in the calculation to determine the base energy cost to be fixed and amortized pursuant to Option D for such billing cycle and the amortized Fixed Firm Energy Payment in cents/KWH times the energy delivered by the QS not to exceed the MWH block specified in Appendix E.

Issued by: S. E. Romig, Director, Rates and Tariffs  
Effective: May 22, 2007

FLORIDA POWER & LIGHT COMPANY

Original Sheet No. 10.315

**APPENDIX D  
TO THE STANDARD OFFER CONTRACT  
DETAILED PROJECT INFORMATION**

Each eligible Contract received by FPL will be evaluated to determine if the underlying QS project is financially and technically viable. The QS shall, to the extent available, provide FPL with a detailed project proposal which addresses the information requested below.

**I. FACILITY DESCRIPTION**

- Project Name
- Project Location
  - ◆ Street Address
  - ◆ Site Plot Plan
  - ◆ Legal Description of Site
- Generating Technology
- Facility Classification ( include types from statute)
- Primary Fuel
- Alternate Fuel (if applicable)
- Committed Capacity
- Expected In-Service Date
- Steam Host (for cogeneration facilities)
  - ◆ Street Address
  - ◆ Legal Description of Steam Host
  - ◆ Host's annual steam requirements (lbs/yr)
- Contact Person
  - ◆ Individual's Name and Title
  - ◆ Company Name
  - ◆ Address
  - ◆ Telephone Number
  - ◆ Telecopy Number

**II. PROJECT PARTICIPANTS**

- Indicate the entities responsible for the following project management activities and provide a detailed description of the experience and capabilities of the entities:
  - ◆ Project Development
  - ◆ Siting and Licensing the Facility
  - ◆ Designing the Facility
  - ◆ Constructing the Facility
  - ◆ Securing the Fuel Supply
  - ◆ Operating the Facility
- Provide details on all electrical generation facilities which are currently under construction or operational which were developed by the QS.
- Describe the financing structure for the projects identified above, including the type of financing used, the permanent financing term, the major lenders, and the percentage of equity invested at financial closing.

(Continued on Sheet No. 10.316)

Issued by: S. E. Romig, Director, Rates and Tariffs  
Effective: May 22, 2007



FLORIDA POWER & LIGHT COMPANY

Original Sheet No. 10.316

(Continued from Sheet No. 10.315)

III. FUEL SUPPLY

- Describe all fuels to be used to generate electricity at the Facility. Indicate the specific physical and chemical characteristics of each fuel type (e.g., Btu content, sulfur content, ash content, etc.). Identify special considerations regarding fuel supply origin, source and handling, storage and processing requirements.
- Provide annual fuel requirements (AFR) necessary to support the requirements pursuant to Section 366.91, Florida Statutes, and the planned levels of generation and list the assumptions used to determine these quantities.
- Provide a summary of the status of the fuel supply arrangements in place to meet the ARFR in each year of the proposed operating life of the Facility. Use the categories below to describe the current arrangement for securing the AFR.

Category	Description of Fuel Supply Arrangement
owned =	fuel is from a fully developed source owned by one or more of the project participants
contract =	fully executed firm fuel contract exists between the developer(s) and fuel supplier(s)
LOI =	a letter of intent for the fuel supply exists between developer(s) and fuel supplier(s)
REF =	renewable energy facility will burn biomass, waste, or another renewable resource
spot =	fuel supply will be purchased on the spot market
none =	no firm fuel supply arrangement currently in place
other =	fuel supply arrangement which does not fit any of the above categories (please describe)

- Indicate the percentage of the Facility's AFR which is covered by the above fuel supply arrangement(s) for each proposed operating year. The percent of AFR covered for each operating year must total 100%. For fuel supply arrangements identified as owned, contract, or LOI, provide documentation to support this category and explain the fuel price mechanism of the arrangement. In addition, indicate whether or not the fuel price includes delivery and, if so, to what location.
- Describe fuel transportation networks available for delivering all primary and secondary fuel to the Facility site. Indicate the mode, route and distance of each segment of the journey, from fuel source to the Energy Facility site. Discuss the current status and pertinent factors impacting future availability of the transportation network.
- Provide annual fuel transportation requirements (AFTR) necessary to support planned levels of generation and list the assumptions used to determine these quantities.
- Provide a summary of the status of the fuel transportation arrangements in place to meet the AFTR in each year of the proposed operating life of the Energy Facility. Use the categories below to describe the current arrangement for securing the AFTR.

owned =	fuel transport via a fully developed system owned by one or more of the project participants
contract =	fully executed firm transportation contract exists between the developer(s) and fuel transporter(s)
LOI =	a letter of intent for fuel transport exists between developer(s) and fuel transporter(s)
Spot =	fuel transportation will be purchased on the spot market
none =	no firm fuel transportation arrangement currently in place
other =	fuel transportation arrangement which does not fit any of the above categories (please describe)

- Indicate the percentage of the Facility's AFR which is covered by the above fuel supply arrangement(s) for each proposed operating year. The percent of AFR covered for each operating year must total 100%. For fuel supply arrangements identified as owned, contract, or LOI, provide documentation to support this category and explain the transportation price mechanism of the arrangement.
- Provide the maximum, minimum, and average fuel inventory levels to be maintained for primary and secondary fuels at the Facility site. List the assumptions used in determining the inventory levels.

(Continued on Sheet No. 10.317)

Issued by: S. E. Romig, Director, Rates and Tariffs  
Effective: May 22, 2007

**FLORIDA POWER & LIGHT COMPANY**

**Original Sheet No. 10.317**

(Continued from Sheet No. 10.316)

**IV. PLANT DISPATCHABILITY/CONTROLLABILITY**

- Provide the following operating characteristics and a detailed explanation supporting the performance capabilities indicated.
  - ◆ Ramp Rate (MW/minute)
  - ◆ Peak Capability (% above Committed Capacity)
  - ◆ Minimum power level (% of Committed Capacity)
  - ◆ Facility Turnaround Time, Hot to Hot (hours)
  - ◆ Start-up Time from Cold Shutdown (hours)
  - ◆ Unit Cycling (# cycles/yr)
  - ◆ MW and MVAR Control (AGC, Manual, Other (please explain))

**V. SITING AND LICENSING**

- Provide a licensing/permitting milestone schedule which lists all permits, licenses and variances required to site the Facility. The milestone schedule shall also identify key milestone dates for baseline monitoring, application preparation, agency review, certification and licensing/siting board approval, and agency permit issuance.
- Provide a licensing/permitting plan that addresses the issues of air emissions, water use, wastewater discharge, wetlands, endangered species, protected properties, solid waste, surrounding land use, zoning for the Facility, associated linear facilities, and support of and opposition to the Facility.
- List the emission/effluent discharge limits the Facility will meet, and describe in detail the pollution control equipment to be used to meet these limits.

**VI. FACILITY DEVELOPMENT AND PERFORMANCE**

- Submit a detailed engineering, procurement, construction, startup and commercial operation schedule. The schedule shall include milestones for site acquisition, engineering phases, selection of the major equipment vendors, architect engineer, EPC contractor, and Facility operator, steam host integration, and delivery of major equipment. A discussion of the current status of each milestone should also be included where applicable.
- Attach a diagram of the power block arrangement. Provide a list of the major equipment vendors and the name and model number of the major equipment to be installed.
- Provide a detailed description of the proposed environmental control technology for the Facility and describe the capabilities of the proposed technology.
- Attach preliminary flow diagrams for the steam system, water system, and fuel system, and a main electrical one line diagram for the Facility.
- State the expected heat rate (HHV) at 75 degrees Fahrenheit for loads of 100%, 75%, and 50%. In addition, attach a preliminary heat balance for the Facility.
- [NOTE: add any requirements related to demonstrating that the facility meets the requirements under the statute or applicable rules]

(Continued on Sheet No. 10.318)

Issued by: S. E. Romig, Director, Rates and Tariffs  
Effective: May 22, 2007

FLORIDA POWER & LIGHT COMPANY

Original Sheet No. 10.318

(Continued from Sheet No. 10.317)

VII. FINANCIAL

- Provide FPL with assurances that the proposed QS project is financially viable consistent with FPSC Rule 25-17.0832(4) (c) by attaching a detailed pro-forma cash flow analysis. The pro-forma must include, at a minimum, the following assumptions for each year of the project.
  - ◆ Annual Project Revenues
    - Capacity Payments (\$ and \$/KW/Mo)
    - Variable O&M (\$ and \$/MWh)
    - Energy (\$ and \$/MWh)
    - Steam Revenues (\$ and %/lb.)
    - Tipping Fees (\$ and \$/ton)
    - Interest Income
    - Other Revenues
    - Variable O&M Escalation (%/yr)
    - Energy Escalation (%/yr)
    - Steam Escalation (%/yr)
    - Tipping Fee Escalation (%/yr)
  - ◆ Annual Project Expenses
    - Fixed O&M (\$ and \$/KW/Mo)
    - Variable O&M (\$ and \$/MWh)
    - Energy (\$ and \$/MWh)
    - Property Taxes (\$)
    - Insurance (\$)
    - Emission Compliance (\$ and \$/MWh)
    - Depreciation (\$ and %/yr)
    - Other Expenses (\$)
    - Fixed O&M Escalation (%/yr)
    - Variable O&M Escalation (%/yr)
    - Energy Escalation (%/yr)
  - ◆ Other Project Information
    - Installed Cost of the Energy Facility (\$ and \$/KW)
    - Committed Capacity (KW)
    - Average Heat Rate - HHV (MBTU/KWh)
    - Federal Income Tax Rate (%)
    - Facility Capacity Factor (%)
    - Energy Sold to FPL (MWH)
  - ◆ Permanent Financing
    - Permanent Financing Term (yrs)
    - Project Capital Structure (percentage of long-term debt, subordinated debt, tax exempt debt, and equity)
    - Financing Costs (cost of long-term debt, subordinated debt, tax exempt debt, and equity)
    - Annual Interest Expense
    - Annual Debt Service (\$)
    - Amortization Schedule (beginning balance, interest expense, principal reduction, ending balance)
- Provide details of the financing plan for the project and indicate whether the project will be non-recourse project financed. If it will not be project financed please explain the alternative financing arrangement.
- Submit financial statements for the last two years on the principals of the project, and provide an illustration of the project ownership structure.

Issued by: S. E. Romig, Director, Rates and Tariffs  
Effective: May 22, 2007



FLORIDA POWER & LIGHT COMPANY

First Revised Sheet No. 10.319  
Cancels Original Sheet No. 10.319

APPENDIX E  
TO THE STANDARD OFFER CONTRACT  
CONTRACT OPTIONS TO BE SELECTED BY QS

Avoided Unit Selected \_\_\_\_\_

Term of Contract

Execution date \_\_\_\_\_  
Termination date \_\_\_\_\_

Firm Capacity Rates

Commencement date for deliveries of Firm Energy and Capacity \_\_\_\_\_

Capacity Payment Option Selected (from available Options A through E) \_\_\_\_\_  
If Option E is selected proposed payment stream:

\_\_\_\_\_  
\_\_\_\_\_

Schedule of Capacity Payments to be provided by the Company based on applicable parameters follows:

Year	<u>\$/KW/Month</u>
------	--------------------

Energy Rates

Energy payment Options selected applicable to energy produced by the QS and delivered to the Company (from available Option A or B and D)

Select from Option A or B \_\_\_\_\_

And

Select D \_\_\_\_\_

If Option D is selected by the QS; the Company and the QS mutually agree on fixing and amortizing the following portion of the Base Energy Costs associated with the Avoided Unit

\_\_\_\_\_ % which yields \_\_\_\_\_ MWH

Projected Energy Cost of Energy Produced by Avoided Unit (provided by the Company):

<u>Year</u>	<u>Projected Fixed Energy Cost (in Cents/KWH or in Dollars)</u>
-------------	---

Based on the projections of Energy Costs Produced by the Avoided Unit and the mutually agreed upon Portion of the Base Energy Costs associated with the Avoided Unit the Fixed Energy Payment shall be \_\_\_\_\_ \$/MWH or \$ \_\_\_\_\_ (as applicable).

Issued by: Steve Romig, Tiffany Cohen, Director, Rates and Tariffs  
Effective: May 22, 2007

# Item 13



State of Florida



## Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD  
TALLAHASSEE, FLORIDA 32399-0850

**-M-E-M-O-R-A-N-D-U-M-**

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**DATE:** May 23, 2018

**TO:** Office of Commission Clerk (Stauffer)

**FROM:** Division of Engineering (Wooten, Ellis, Wright) *NK DW TM On*  
Office of the General Counsel (Dziechciarz) *PD Cm*

**RE:** Docket No. 20180091-EQ – Petition for approval of revisions to standard offer for energy purchased from cogenerators and renewable generating facilities and standard offer contract for purchases of firm capacity and energy, by Florida Public Utilities Company.

**AGENDA:** 06/05/18 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

**COMMISSIONERS ASSIGNED:** All Commissioners

**PREHEARING OFFICER:** Administrative

**CRITICAL DATES:** None

**SPECIAL INSTRUCTIONS:** Staff recommends the Commission simultaneously consider Docket Nos. 20180073-EQ, 20180081-EQ, 20180082-EQ, 20180083-EQ, and 20180091-EQ.

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### Case Background

Section 366.91(3), Florida Statutes (F.S.), requires that each investor-owned utility (IOU) continuously offer to purchase capacity and energy from renewable energy generators and small qualifying facilities. Florida Public Service Commission (Commission) Rules 25-17.200 through 25-17.310, Florida Administrative Code (F.A.C.), implement the statute and require each IOU to file with the Commission, by April 1 of each year, a standard offer contract based on the next avoidable fossil fueled generating unit of each technology type identified in the Utility's current Ten-Year Site Plan. On March 29, 2018, Florida Public Utilities Company (FPUC) submitted a petition for approval of its revised standard offer contract, pursuant to the rules cited above and

Rules 25-9.003, 25-17.0825, and 25-17.0832, F.A.C. However, the petition was erroneously submitted to the Commission's Division of Economics. On April 5, 2018, FPUC filed its petition with the Office of Commission Clerk, requesting that the Commission accept its late-filed petition.

Because FPUC, an IOU, does not own or operate any electric generating units, it does not have any avoidable units on which to base its standard offer contract. Rule 25-17.250(1), F.A.C., requires that, under these circumstances, the standard offer contract be based on avoiding or deferring a planned purchase. In its Northwest Division, FPUC currently purchases all of its electric power through purchased power agreements with Gulf Power Company (Gulf). FPUC has recently changed its full requirements purchased power supplier for the Northeast Division from JEA, formerly known as the Jacksonville Electric Authority, to Florida Power & Light (FPL). Revisions to FPUC's standard offer contract and rate schedule are limited to changes reflecting FPL replacing JEA.

The Commission has jurisdiction over this standard offer contract pursuant to Sections 366.04 through 366.06, and 366.91, F.S.



### Discussion of Issues

**Issue 1:** Should the Commission approve the revisions to the standard offer rate schedule and standard offer contract filed by Florida Public Utilities Company?

**Recommendation:** Yes. FPUC's revised standard offer rate schedule and standard offer contract conform to all the requirements of Rules 25-17.200 through 25-17.310, F.A.C., and reflect the avoidable costs associated with FPUC's power purchase agreements. (Wright)

**Staff Analysis:** Pursuant to Rule 25-17.250, F.A.C., an IOU must continuously make available a standard offer contract for the purchase of firm capacity and energy from renewable generating facilities (RF) and small qualifying facilities (QF) with a design capacity of 100 kilowatts (kW) or less. FPUC does not own or operate any of its own electric generating facilities, and thus does not file a Ten-Year Site Plan. Instead, FPUC purchases its electric energy under long-term, full requirements contracts with wholesale providers.

The standard offer rate schedule consists of three components: (1) the Standard Offer – As Available Schedule (SOA); (2) the Standard Offer – Firm Schedule (SOF); and (3) the Standard Offer Contract. Current revisions to FPUC's standard offer contract and rate schedule are limited to changes reflecting FPL replacing JEA as FPUC's full requirements supplier for FPUC's Northeast Division. The revised standard offer rate schedule and standard offer contract, in type-and-strike format, are included as Attachment A to this recommendation. The capacity and energy payments under the proposed rate schedule depend on the terms of FPUC's wholesale contracts with its suppliers for FPUC's Northeast Division and Northwest Division.

#### Northeast Division

At present, FPL is the full requirements supplier for FPUC's Northeast Division, which consists of Fernandina Beach and Amelia Island. In response to Staff's First Data Request, FPUC provided estimates of the annual payments to an operator of a 10 megawatt (MW) facility, operating at a capacity factor of 70 percent, under a 20 year contract for (1) RF/QF operators located inside the service territory and (2) for operators delivering power to interconnection with the territory.<sup>1</sup> Under both of these scenarios, FPUC estimated that its annual energy payments would be approximately \$1.9 million starting in 2019 and would increase annually, based on the full reduction in FPL billing to FPUC. FPUC's estimated annual capacity payments are confidential.

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<sup>1</sup>Document No. 03336-2018, filed April 30, 2018, in Docket No. 20180091-EQ.

### **Northwest Division**

At present, Gulf is the full requirements supplier for FPUC's Northwest Division, which consists of portions of Jackson, Calhoun, and Liberty counties. In response to Staff's First Data Request, FPUC provided estimates of the annual payments to an operator of a 10 MW facility, operating at a capacity factor of 70 percent, under a 20 year contract for (1) RF/QF operators located inside the service territory and (2) for operators delivering power to interconnection with the territory.<sup>2</sup> Under both of these scenarios, FPUC estimated that its annual energy payments would be approximately \$2.1 million starting in 2019 and would increase annually, based on the full reduction in Gulf billing to FPUC. FPUC's estimated annual capacity payments are confidential.

### **Conclusion**

FPUC's revised standard offer rate schedule and standard offer contract conform to all the requirements of Rules 25-17.200 through 25-17.310, F.A.C., and reflect the avoidable costs associated with FPUC's power purchase agreements. Staff recommends that the revisions to the rate schedule and standard offer contract filed by FPUC be approved as filed.

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<sup>2</sup>Document No. 03336-2018, filed April 30, 2018, in Docket No. 20180091-EQ.

**Issue 2:** Should this docket be closed?

**Recommendation:** Yes. This docket should be closed upon issuance of a consummating order, unless a person whose substantial interests are affected by the Commission's decision files a protest within 21 days of the issuance of the Commission's Proposed Agency Action Order. Potential signatories should be aware that, if a timely protest is filed, FPUC's standard offer contract may subsequently be revised. (Dziechciarz)

**Staff Analysis:** This docket should be closed upon the issuance of a consummating order, unless a person whose substantial interests are affected by the Commission's decision files a protest within 21 days of the issuance of the Commission's Proposed Agency Action Order. Potential signatories should be aware that, if a timely protest is filed, FPUC's standard offer contract may subsequently be revised.



Florida Public Utilities Company  
F.P.S.C. Standard Offer Rate Schedule  
Original Volume No. I

Original Sheet No. I

**STANDARD OFFER RATE SCHEDULES  
FOR PURCHASES FROM COGENERATORS & RENEWABLE GENERATING FACILITIES  
ORIGINAL VOLUME NO. I  
OF  
FLORIDA PUBLIC UTILITIES COMPANY  
FILED WITH  
FLORIDA PUBLIC SERVICE COMMISSION**

Communications concerning this Tariff should be addressed to:

Florida Public Utilities Company  
1750 S. 14th Street, Ste. 200  
Fernandina Beach, FL 32034

Attn: Director, Regulatory Affairs

Issued by: Jeffry Householder, President

Effective: NOV 11 2016

Florida Public Utilities Company  
F.P.S.C. Standard Offer Rate Schedule  
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Original Sheet No. 2

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F.P.S.C. Standard Offer Rate Schedule  
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~~First~~ Second Revised Sheet No. 3  
Cancels ~~Original~~ First Revised Sheet No. 3

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*TERRITORY SERVED*

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FPUC serves the following divisions:

The Northwest Florida (Marianna) Division serves various cities and towns and rural communities in Jackson, Calhoun and Liberty Counties. Currently, Gulf Power is Florida Public Utilities Company's Full Requirements Wholesale Power Supplier for the Northwest Florida Division.

The Northeast Florida (Fernandina Beach) Division serves Amelia Island, located in Nassau County. ~~Jacksonville Electric Authority~~ Florida Power and Light is Florida Public Utilities Company's Full Requirements Wholesale Power Supplier for the Northeast Florida Division.

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Florida Public Utilities Company  
F.P.S.C. Standard Offer Rate Schedule  
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*MISCELLANEOUS GENERAL INFORMATION*

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Florida Public Utilities Company was incorporated under the Laws of Florida in 1924 and adopted its present corporate name in 1927.

It is principally engaged in the distribution and sale of natural gas and electricity. Its operations are entirely within the State of Florida.

The general office of the Company is located at:

1641 Worthington Road, Suite 220  
West Palm Beach, Florida 33409

Division offices are located at:

2825 Pennsylvania Avenue  
Marianna, Florida 32448-4004

and

780 Amelia Island Parkway  
Fernandina Beach, Florida 32034

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Florida Public Utilities Company  
F.P.S.C. Standard Offer Rate Schedule  
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First Revised Sheet No. 5

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*TECHNICAL TERMS AND ABBREVIATIONS*

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When used in the Rules and Regulations or the rate schedules in this volume, the following terms shall have the meanings defined below:

- A. Applicant – any person, firm, or corporation applying for electric service from the Company at one location.
- B. Avoided Cost – shall be equal to the costs avoided by the Company's respective Full Requirements Wholesale Power Suppliers for its Northwest and Northeast Florida Divisions, at the time the purchase is made, as calculated by the Full Requirements Wholesale Power Suppliers in accordance with FPSC Rules 25-17.0825 and 17.0832, F.A.C., when making equivalent purchases of energy and/or capacity from a QF or from a QS, as that term is defined at Sheet No. 22.
- C. Capacity Factor – the total kilowatt hours of energy delivered to the Company during a specified period, divided by the product of: (1) the maximum kilowatt capacity contractually committed for delivery to the Company by the QF during that same specified period and (2) the sum of the total hours during that same period less those hours during which the Company was unable to accept energy and capacity deliveries from the QF.
- D. Capacity Rating – the QF's maximum generating capability, expressed in kilowatts, connected to the Company's electric system.
- E. Company – Florida Public Utilities Company acting through its duly authorized officers or employees within the scope of their respective duties.
- F. Customer – any person, firm, or corporation purchasing electric service at one location from the Company under Rules and Regulations of the Company.
- G. Energy – current delivered, expressed in kilowatt-hours.
- H. Full Requirements Wholesale Power Supplier - the wholesale power supplier providing energy and capacity to FPUC under a service contract that includes a load following obligation, whereby the supplier is required to meet the demand on FPUC's distribution system as that demand fluctuates on an hour by hour basis.
- I. KW or Kilowatt – one thousand (1,000) watts.
- J. KWh or Kilowatt-hour – one thousand (1,000) watt-hours.
- K. Month – the period between any two (2) regular readings of the QF's meters at approximately thirty (30) day intervals.

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F.P.S.C. Standard Offer Rate Schedule  
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*TECHNICAL TERMS AND ABBREVIATIONS*

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- L. Qualifying Facility or QF - means a cogenerator, small power producer, or non-utility generator that either through self-certification to, or certification by, the Federal Energy Regulatory Commission ("FERC") meets the criteria established by the FERC pursuant to the Public Utility Regulatory Policies Act of 1978, as amended, ("PURPA") or as otherwise designated by Florida Public Service Commission ("FPSC") under Rule 25-17.080, Florida Administrative Code. For purposes of this tariff, the term shall also include a Renewable Generating Facility.
- M. Power Factor – ratio of kilowatts to kilovolt-amperes.
- N. Renewable Generating Facility – 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 (BTUs) 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, consistent with Rules 25-17.210 and 25-17.220, Florida Administrative Code
- O. Service Line – all wiring between the Company's main line or transformer terminals and the point of connection to the QF's service entrance.
- P. Single Service – one set of facilities over which the QF may deliver electric power to the Company.
- Q. Year – a period of three hundred sixty-five (365) consecutive days except that in a year having a date of February twenty-nine (29) such year shall consist of three hundred sixty-six (366) consecutive days.

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*RULES AND REGULATIONS*

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Applicable to As-Available and Firm Standard Offer Rate Schedules

1. General

Company shall furnish service under its rate schedules and these Rules and Regulations as approved from time to time by the Florida Public Service Commission and in effect at the time. These Rules and Regulations shall govern all service except as specifically modified by the terms and conditions of the rate schedules or written contracts. Copies of currently effective Rules and Regulations are available at the office of the Company.

Unless otherwise specifically provided in any applicable rate schedule or in a written contract by or with Company, the term of any agreement shall become operative on the day the Qualifying Facility commences delivery of electric energy and/or capacity to the Company and shall continue for a period of one (1) year and continuously thereafter until cancelled by three (3) or more days' notice by either party.

2. Application for Service

An application for service will be required by Company from each Applicant. The application or contract for service shall be in writing. Such application shall contain the information necessary to determine the type of service desired and the conditions under which service will be rendered.

The application or depositing of any sum of money by the Applicant shall not require Company to render service until the expiration of such time as may be reasonable required by Company to determine if Applicant has complied with the provisions of these Rules and Regulations and as may reasonably be required by Company to install the required facilities.

3. Election of Rate Schedule

Optional rates are available for the purchase of electric energy by the Company from a Qualifying Facility, namely, As-Available Energy and Firm Power. These optional rates and the conditions under which they are applicable are set forth in Company's Rate Schedule SOA and Rate Schedule SOF. Upon application for service or upon request, Applicant or Qualifying Facility shall elect the applicable rate schedule best suited to his requirements. Once the Qualifying Facility has elected a rate schedule, no change shall be allowed during the remaining term of the then existing contract.

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*RULES AND REGULATIONS (Continued)*

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4. Deposits

An initial deposit in the first year of operation may be required of a Qualifying Facility who is also a purchasing customer of the Company and whose monthly dollar value of purchases from the Company are estimated to exceed the monthly dollar value of sales to the Company. Such deposit shall be based upon the singular month in which the Qualifying Facility's projected purchases from the company exceed by the greatest amount the Company estimated purchased from the Qualifying Facility. The initial deposit shall be equal to twice the amount of the difference estimated for that month and shall be paid upon interconnection. For each year thereafter, a review of actual sales and purchases between the Qualifying Facility and the Company shall be made to determine the actual month of maximum difference. The deposit shall be adjusted to equal twice the greatest amount by which the actual monthly purchases by the Qualifying Facility exceed the actual sales to the Company in that month.

In lieu of a cash deposit, a Qualifying Facility may,

- (a) Furnish a satisfactory guarantor to secure payment of bills for the service requested, with such guarantor required to be a customer of the Company with a satisfactory payment record.
- (b) Furnish an irrevocable letter of credit from a bank.
- (c) Furnish a surety bond.

Retention by Company, prior to a final settlement, of said deposit shall not be considered as payment or part payment of any bill for service. Company shall, however, apply said deposit against unpaid bills for service. In such case, Qualifying Facility shall be required to restore deposit to original amount within 30 days.

Company shall pay interest on deposits annually at the rate of two per cent (2%) per annum. No Qualifying Facility shall be entitled to receive interest on his deposit until and unless the deposit has been in existence for a continuous period of six months; then he shall be entitled to receive interest from the day of placement of deposit. Deposits shall cease to bear interest upon discontinuance of service.

Upon discontinuance of service, the deposit and accrued interest shall be credited against the final account and the balance, if any, shall be returned promptly to the qualifying Facility, but in no event later than fifteen (15) days after service is discontinued.

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*RULES AND REGULATIONS (Continued)*

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5. Metering

Company shall specify the type of meter or meters that shall be installed to properly measure purchases of capacity and energy from Qualifying Facility. The cost of such meters and their installation shall be borne by the Qualifying Facility. Time-differentiated recording meters may be required by the Company when:

- (a) A time record of measured capacity and/or energy purchased is required by the Company to determine the proper billing units.

When a Qualifying Facility is also a purchasing Customer of the Company, the measurement of such purchases by the Qualifying Facility shall be through a separate meter or meters apart from the meter or meters measuring sales to the Company. The cost of meters for measuring purchases by Customer shall be borne by the Company.

Before installation and periodically thereafter, each meter shall be tested and adjusted using methods and accuracy limits prescribed or approved by the Florida Public Service Commission. Periodic test and inspection intervals shall not exceed the maximum period allowed by the Florida Public Service commission.

If, on test, the meter is found to be in error in excess of the prescribed accuracy limits, fast or slow, the amount of refund or charge to the Qualifying Facility shall be determined by methods prescribed or approved by the Florida Public Service Commission.

In the event of stoppage or failure of any meter to register, Qualifying Facility may be paid for such period on an estimated basis; using data on electric energy delivered to Company in a similar period or such other data as may be reasonably obtainable to aid in determining estimated deliveries.

6. Billing and Payments

A. Meter Reading and Payment Schedules

Each Qualifying Facility's meter will be read by the Company at monthly intervals as near as possible to the last day of each calendar month. The Company will prepare the bill and render payment to the Qualifying Facility for purchases during the preceding calendar month within twenty (20) business days following the day the meter is read. Details of the billing units and the applicable rates will accompany payment.

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*RULES AND REGULATIONS (Continued)*

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B. Selection of Billing Methodology

Qualifying Facility may elect to make either simultaneous purchases and sales or net sales to the Company. Once made, the selection of a billing methodology may be changed at the option of the Qualifying Facility, subject to the following provisions:

- (1) not more frequently than once every twelve (12) month;
- (2) to coincide with the next Fuel and Purchased Power Cost Recovery Factor billing period;
- (3) upon at least thirty (30) days' advance written notice;
- (4) upon the installation by the Company of any additional metering equipment reasonably required to effect the change in billing and upon payment by the Qualifying Facility for such metering equipment and its installation;
- (5) upon completion and approval by the Company of any alterations to the interconnection reasonably required to effect the change in billing and upon payment by the Qualifying Facility for such alterations; and
- (6) where the election to change billing methods will not contravene the provisions of the tariff under which the Qualifying Facility receives service from the Company or any other previously agreed upon contractual provisions between the Qualifying Facility and the Company.

Should Qualifying Facility elect to make simultaneous purchases and sales, purchases of electric service by the Qualifying Facility from the Company shall be billed at the retail rate schedule under which the Qualifying Facility would receive service as a non-generating customer of the Company; sales of electricity by the Qualifying Facility to the Company shall be purchased at the Company's applicable rate for such purchases.

Should Qualifying Facility elect to make net sales, the monthly energy and capacity sales to the Company shall be purchased at the Company's applicable rate for such purchases. For those months during which Qualifying Facility is a net purchaser, purchases shall be billed at the Company's retail rate schedule under which the Qualifying Facility would receive service as a non-generating customer of the Company.

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*RULES AND REGULATIONS (Continued)*

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Where simultaneous purchases and sales are made by Qualifying Facility, payments to Qualifying Facility may, at the option of Qualifying Facility, be shown as a credit to Qualifying Facility's bill. Details of the billing units and the applicable rates will accompany the bill to Qualifying Facility. A credit will not exceed the amount of the Qualifying Facility's bill from Company and the excess, if any, will be paid to the Qualifying Facility.

7. Interconnection and Standards

Rule 25-17.87 of the Florida Public Service Commission will apply. Copies of this rule are available upon request at the office of the Company.

8. Responsibilities of Qualifying Facilities Providing Power for Purchase by Company

Company shall have the right to enter the premises of Qualifying Facility at all reasonable hours for the purpose of making such inspection of Qualifying Facility's installation as may be necessary for the proper application of Company's rate schedules and Rules and Regulations for installing, removing, testing, or replacing its apparatus or property; for reading meters; and for the entire removal of Company's property in event of termination of service for any reason.

All property of Company installed in or upon a Qualifying Facility's premises used and useful in supplying service is placed there under the Qualifying Facility's protection. All reasonable care shall be exercised by the Qualifying Facility to prevent loss or damage to such property and, ordinary wear and tear excepted, Qualifying Facility will be held liable for any such loss of property or damage thereto and shall pay to Company the cost of necessary repairs or replacements.

Qualifying Facility will be held responsible for breaking the seals, tampering or interfering with Company's meter or meters or other equipment of Company installed on Qualifying Facility's premises, and no one except employees of Company will be allowed to make any repairs or adjustments to any meter or other piece of apparatus belonging to Company except in case of emergency.

Qualifying Facility shall not increase the capacity rating of its electric generating equipment connected to the Company's system without first notifying Company in writing and obtaining written consent.

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*RULES AND REGULATIONS (Continued)*

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Company shall have the right, if necessary; to construct its poles, lines and circuits on Qualifying Facility's property and to place its transformers and other apparatus on the property or within the buildings of Qualifying Facility, at a point or points convenient for such purposes, and Qualifying Facility shall provide suitable space for such installation.

Company shall have the right to require, if necessary, the installation of such remote metering equipment as may be necessary for Qualifying Facility to properly monitor Company's load at the delivery point of the Company's Full Requirements Wholesale Power Supplier on the system to which Qualifying Facility is connected. The cost of such installation shall be borne by Qualifying Facility.

9. Responsibilities and Obligations of Company

Company will use reasonable diligence to purchase electric energy and/or capacity from Qualifying Facility as may be practically and safely allowable within the limits of load and line capacity on the Company's system to which Qualifying Facility is connected. Company may interrupt its purchases hereunder, however, for the purpose of making necessary alterations and repairs, but only for such time as may be reasonable or unavoidable, and Company shall give Qualifying Facility, except in case of emergency, reasonable notice of its intention so to do, and shall endeavor to arrange such interruption so as to inconvenience Qualifying Facility as little as possible.

Whenever Company deems an emergency warrants interruption or limitation in the service being rendered, such interruption or limitation shall not constitute a breach of contract and shall not render Company liable for damages suffered thereby or excuse Qualifying Facility from further fulfillment of the contract.

Company shall not be liable to Qualifying Facility for any loss, injury, or damage from use of Qualifying Facility's equipment or from the use of electric service furnished by Company or from the connection of Company's facilities with Qualifying Facility's wiring and equipment.

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*RULES AND REGULATIONS (Continued)*

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10. Force Majeure

Except for payment of bills due, neither the Company nor the Qualifying Facility shall be liable in damage to the other for any act, omission or circumstances occasioned by or in consequence of any acts of God, strikes, lockouts, acts of the public enemy, wars, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, storms, floods, unforeseeable or unusual weather conditions, washouts, arrests and restraint of rules and peoples, civil disturbances, explosions, breakage or accident to machinery or electric lines, temporary failure of electric supply, the binding order of any court or governmental authority which has been resisted in good faith by all reasonable legal means, and any other cause, whether of the kind herein enumerated, or otherwise, and whether caused or occasioned by or happening on account of the act or omission of Company or Qualifying Facility or any other person or concern not reasonably within the control of the party claiming suspension and which by the exercise of due diligence such party is unable to prevent or overcome. A failure to settle or prevent any strike or other controversy with employees or with anyone purporting or seeking to represent employees shall not be considered to be a matter within the control of the party claiming suspension.

11. Discontinuance of Service

The Company reserves the right, but assumes no liability for failure so to do, to discontinue service to or from any Qualifying Facility for cause as follows:

A. Without notice,

- (1) If a dangerous condition exists on Qualifying Facility's wiring or energy-generation devices.
- (2) Because of a fraudulent use of the service or tampering with Company's equipment.
- (3) Upon request by Qualifying Facility, subject to any existing agreement between Qualifying Facility and Company as to unexpired term of service.

B. After five (5) working days' notice in writing,

- (1) For nonpayment of bill for electric service.
- (2) For refusal or failure to make a deposit or increase a deposit, when requested, to assure payment of bills.
- (3) For a violation of these Rules and Regulations which Qualifying Facility refuses or neglects to correct.

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Florida Public Utilities Company  
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*RULES AND REGULATIONS (Continued)*

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12. Reconnection of Service

When service shall have been disconnected for any of the reasons set forth in these Rules and Regulations, Company shall not be required to restore service until the following conditions have been met by Qualifying Facility.

A. Where service was discontinued without notice.

- (1) The dangerous condition shall be removed and, if the Qualifying Facility had been warned of the condition a reasonable time before the discontinuance and had failed to remove the dangerous condition, a reconnection fee of fifty two dollars (\$52.00) shall be paid.
- (2) All bills for service due Company by reason of fraudulent use or tampering shall be paid, a deposit to guarantee the payment of future bills shall be made, and a reconnection fee of fifty two dollars (\$52.00) shall be paid.
- (3) If reconnection is requested on the same premises after discontinuance, a reconnection fee of fifty two dollars (\$52.00) shall be paid.

B. Where service was discontinued with notice.

- (1) Satisfactory arrangements for payment of all bills for service then due shall be made and a reconnection fee of fifty two dollars (\$52.00) shall be paid.
- (2) A satisfactory guarantee of payment for all future bills shall be furnished and a reconnection fee of fifty two dollars (\$52.00) shall be paid.
- (3) The violation of these Rules and Regulations shall be corrected and a reconnection fee of fifty two dollars (\$52.00) shall be paid.

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*RULES AND REGULATIONS (Continued)*

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13. Limits of Purchases/Changes

Company reserves the right, subject to regulatory authority having jurisdiction, to limit, restrict or refuse service that will jeopardize the reliable, safe and proper operation of its distribution system and/or jeopardize service to existing Customers at fair and reasonable rates. Qualifying Facilities providing energy and/or capacity hereunder further recognize that the applicable avoided cost may change, from time to time, and payments hereunder will change to reflect the appropriate avoided cost. In the event that any change in applicable federal or state law renders service under this tariff uneconomic or otherwise unduly burdensome to the Company and its customers or the FPSC denies cost recovery for any purchases made pursuant to this tariff, the Company may seek relief from its obligations hereunder from the appropriate jurisdictional authority.

14. Special Contracts

The Company and a Qualifying Facility may enter into a separately negotiated contract for the purchase of capacity and/or energy which varies from the terms and conditions specified in these Rules and Regulations and rate schedules. All such contracts will be filed with the Florida Public Service Commission in accordance with its applicable rules and regulations.

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Florida Public Utilities Company  
F.P.S.C. Standard Offer Rate Schedule  
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Original Sheet No. 17

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*SOA Rate Schedule*

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STANDARD OFFER AS AVAILABLE (SOA) RATE SCHEDULE

Availability

The Company will purchase energy offered by any Qualifying Facility with delivery to either of the two individually operated areas served by the Company, both of which are located in the northern part of Florida.

The Northwest Florida (Marianna) Division serves various cities and towns and rural communities in Jackson, Calhoun and Liberty Counties.

The Northeast Florida (Fernandina Beach) Division serves Amelia Island, located in Nassau County.

Applicability

To any Qualifying Facility located in the State of Florida and producing energy for sale to the Company on an As-Available basis. As-Available Energy is described by Florida Public Service Commission (FPSC) Rule 25-17.0825, F.A.C. and is energy produced and sold by a Qualifying Facility on an hour-by-hour basis for which contractual commitments as to the time, quantity, or reliability of delivery are not required.

Character of Service

Alternating current, 60 cycle, single phase or three phase at the options of the Company, at a specified interconnection point and voltage.

Limitations of Service

All service pursuant to this schedule is subject to FPSC Rules 25-17.080 through 25-17.091, Florida Administrative Code.

Rate for Purchases by the Company

- I. Capacity Rates
  - A. Capacity payments to Qualifying Facilities will not be paid under this Rate Schedule. Capacity payments to Qualifying Facilities may be obtained under Rate Schedule SOF, Firm Power, or pursuant to a negotiated contract.

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Florida Public Utilities Company  
F.P.S.C. Standard Offer Rate Schedule  
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~~First~~ Second Revised Sheet No. 18  
Cancels ~~Original First Revised~~ Sheet No. 18

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*SOA Rate Schedule (Continued)*

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Continued from Sheet No. 17

2. Energy Rates

- A. As-Available energy is purchased at a unit cost based on the Avoided Cost, as defined in this Tariff, as applicable to the relevant Company Division. Payments for As-Available Energy to the QF shall only be made for energy that the Company can utilize to meet total system load for the division to which the deliveries are made.
- B. Details on Gulf Power's avoided costs, the current Full Requirements Wholesale Power Supplier for Northwest Division, can be reviewed in their Rate Schedule COG-1. Details on ~~Jacksonville Electric Authority's Florida Power and Light's~~ avoided costs, as the current Full Requirements Wholesale Power Supplier for the Northeast Division, can be reviewed in their Renewable Energy Standard Offer Contract within their Tariff.
- C. A fixed percentage factor for avoided line losses (if any) will be determined by the Company for each QF based upon the locations of the QF on the Company's distribution system and the applicable voltage level.
- D. Energy payments to a QF will be reduced by: (1) the amount of any charges assessed by the Company's Full Requirements Wholesale Power Supplier to the Company pursuant to contract as a result of the delivery of energy to the Company by the QF; and (2) any additional administrative, technical, or legal costs incurred by the Company as a direct result of the delivery of energy to the Company by the QF.

3. Negotiated Rates

Upon agreement by both the Company and the Qualifying Facility, an alternate contract rate for the purchase of As-Available Energy may be separately negotiated.

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Florida Public Utilities Company  
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*SOA Rate Schedule (Continued)*

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Continued from Sheet No. 18

4. Charges to Qualifying Facility

- A. Customer charge for meter reading, billing and other administrative costs shall be equal to the currently monthly customer facilities charge as set forth in the rate schedule which is applicable to the QF for the purchase of energy from the Company.
- B. Interconnection Charge for Non-Variable Utility Expenses  
The QF shall bear the cost required for the interconnecting the QF, including metering. The QF shall have the option of payment in full for interconnection or making equal monthly installment payments with interest over a period not exceeding 36 months toward the full cost of such interconnection. In the event that the QF elects the monthly installment option, the initial contract term of service shall not be less than the total months over which such installment payments are to be made.
- C. Interconnection Charge for Variable Utility Expenses  
The Qualifying Facility shall be billed monthly for the cost of variable utility expenses associated with the operation and maintenance of the interconnection facilities. These include (a) the Company's inspections of the interconnection facilities and (b) maintenance of any equipment beyond that which would be required to provide normal electric service to the Qualifying Facility if no sales to the Company were involved.
- D. Taxes and Assessments  
The Qualifying Facility shall be billed monthly an amount equal to any taxes, assessments or other impositions, for which the Company is liable as a result of its purchases of As-Available Energy produced by the Qualifying Facility. In the event the Company receives a tax benefit as a result of its purchases of As-Available Energy produced by the Qualifying Facility, the Qualifying Facility shall be entitled to a refund in an amount equal to such benefit.

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Florida Public Utilities Company  
F.P.S.C. Standard Offer Rate Schedule  
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Original Sheet No. 20

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*SOA Rate Schedule (Continued)*

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Continued from Sheet No. 19

Terms of Service

1. It shall be the QF's responsibility to inform the Company in writing of any change in the QF's electric generating capacity.
2. Any electric service delivered by the Company to the QF shall be metered separately and billed under the rate schedule applicable to the Company's other customers with similar load characteristics. The terms and conditions of the Company's standard rate schedule applicable to the class of service shall pertain.
3. A security deposit will be required in accordance with FPSC Rules 25-17.082(5) and 25-6.97, F.A.C., and the following:
  - A. In the first year of operation, the security deposit shall be based upon the singular month in which the Qualifying Facility's projected purchases from the Company exceed, by the greatest amount, the Company's estimated purchases from the Qualifying Facility. The security deposit should be equal to twice the amount of the difference estimated for that month. The deposit shall be required upon interconnection.
  - B. For each year thereafter, a review of the actual sales and purchases between the Qualifying Facility and the Company shall be conducted to determine the actual month of maximum difference. The security deposit shall be adjusted to equal twice the greatest amount by which the actual monthly purchases by the Qualifying Facility exceed the actual sales to the Company in that month.
4. The Company shall specify the point of interconnection and voltage level.
5. The Company will, under the provisions of this schedule, require an agreement with the Qualifying Facility upon the Company's filed Standard Interconnection Agreement for parallel operation between the Qualifying Facility and the Company. The Qualifying Facility shall recognize that its generation facility may exhibit unique interconnection requirements which will be separately evaluated, modifying the Company's General Standards for Safety and Interconnection where applicable.
6. Service under this Schedule is subject to the Rules and Regulations of the Company and the Rules and Regulations of the Florida Public Service Commission.

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Florida Public Utilities Company  
F.P.S.C. Standard Offer Rate Schedule  
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*SOA Rate Schedule (Continued)*

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Continued from Sheet No. 20

7. The minimum term for any standard offer contract entered into pursuant to this rate schedule shall be five (5) years from the in-service date of the avoided unit up to a maximum of the life of the avoided unit for any qualifying facility that is a co-generator or small power producer with a design capacity of 100 kW or less, or ten (10) years from the in-service date of the avoided unit up to a maximum of the life of the avoided unit for a qualifying renewable generating facility.

Special Provisions

1. Special contracts deviating from the above Schedule are allowable provided they are agreed to by the Company and approved by the Florida Public Service Commission.
2. For a Qualifying Facility in the Company's service territory that wishes to contract with another electric utility which is directly or indirectly interconnected with the Company, the Company will, upon request, provide information on the availability and the terms and conditions of the specified desired transmission service.

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Florida Public Utilities Company  
F.P.S.C. Standard Offer Rate Schedule  
Original Volume No. I

Original Sheet No. 22

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*SOF Rate Schedule*

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STANDARD OFFER FIRM (SOF) RATE SCHEDULE

Availability

The Company will, under the provisions of this Schedule and the Company's "Standard Offer Contract for the Purchase of Firm Capacity and Energy from a Renewable Energy Facility or a Small Qualifying Facility" ("Standard Offer Contract"), purchase firm capacity and energy offered by any Qualifying Facility with a design capacity of 100 KW or less or from a Renewable Generating Facility qualifying for this Schedule in accordance with Rule 25-17.250, Florida Administrative Code. For purposes of this SOF Rate Schedule only, both of these types of facilities shall also be referred to jointly herein as Qualified Seller or "QS".

The Company will purchase firm capacity and energy under this schedule offered by any Qualified Seller located within the State of Florida with delivery to either of the two individually operated areas served by the Company, both of which are located in the northern part of Florida.

The Northwest Florida (Marianna) Division serves various cities and towns and rural communities in Jackson, Calhoun and Liberty Counties.

The Northeast Florida (Fernandina Beach) Division serves Amelia Island, located in Nassau County.

Applicability

To Qualifying Facilities, with a design capacity of 100 KW or less, as specified in FPSC Rule 25-17.0832(4)(a) producing capacity and energy for sale to the Company on a firm basis pursuant to the terms and conditions of this schedule and the Company's "Standard Offer Contract" or to a Renewable Generating Facility producing capacity and energy for sale to the Company on a firm basis pursuant to the conditions of this Schedule and the Company's "Standard Offer Contract." Firm capacity and energy are described by FPSC Rule 25-17.0832, F.A.C., and are capacity and energy produced and sold by a QF or Renewable Generating Facility pursuant to the Standard Offer Contract provisions addressing (among other things) quantity, time and reliability of delivery.

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Florida Public Utilities Company  
F.P.S.C. Standard Offer Rate Schedule  
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Original Sheet No. 23

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*SOF Rate Schedule (Continued)*

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Continued from Sheet No. 22

Character of Service

Alternating current, 60 cycle, single phase or three phase at the options of the Company, at a specified interconnection point and voltage.

Limitations of Service

All service pursuant to this schedule is subject to FPSC Rules 25-17.080 through 25-17.091, Florida Administrative Code.

Purchases under this schedule are subject to the Company's current standards for safety and interconnection and to FPSC Rules 25-17.080 through 25-17.091, F.A.C., and are limited to those Qualifying Sellers that:

- A. Beginning upon the date, as prescribed by the FPSC, that a Standard Offer is deemed available, execute the Company's Standard Offer Contract for the purchase of firm capacity and energy; and
- B. Commit to commence deliveries of firm capacity and energy no later than the date specified by the QS's owner or representative. Such deliveries will continue for a minimum of ten (10) years from the anticipated in-service date of the Company's Avoided unit or resource up to a maximum of the life of the Company's Avoided unit or resource.

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Florida Public Utilities Company  
F.P.S.C. Standard Offer Rate Schedule  
Original Volume No. 1

~~Second First~~ Revised Sheet No. 24  
Cancels ~~Original First Revised~~ Sheet No. 24

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*SOF Rate Schedule (Continued)*

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Continued from Sheet No. 23

Rate for Purchases by the Company

1. Capacity and Energy Rates

- A. Firm Capacity and Energy are purchased at a unit cost, based on the Avoided Cost, as defined in this Tariff, for the relevant Company Division. Payments to the QS shall only be made for capacity and energy that the Company can utilize to meet its total system load for the division to which the deliveries are made.
- B. Details on Gulf Power's avoided capacity and energy costs, the current Full Requirements Wholesale Power Supplier for the Northwest Division, can be reviewed in their Rate Schedule COG-2. Details on ~~Jacksonville Electric Authority's Florida Power and Light's~~ avoided capacity and energy costs, as the current Full Requirements Wholesale Power Supplier for the Northeast Division, can be reviewed in their Renewable Energy Standard Offer Contract within their Tariff.
- C. Payments will be made to the Qualifying Seller at the Avoided Cost for the applicable delivery division for each KW of billing capacity and kwh of energy provided - less: (1) the amount of any charges assessed by the Company's Full Requirements Wholesale Power Supplier to the Company pursuant to contract as a result of the delivery of energy to the Company by the QS; and (2) any additional administrative, technical, or legal costs incurred by the Company as a direct result of the delivery of energy to the Company by the QS.
- D. In the event that a delivery of energy and capacity by a QS does not allow the Company to avoid a capacity payment to its Full Requirements Wholesale Power Supplier, the QS will only be eligible for an Energy payment and will not receive payments for delivery of Billing Capacity.
- E. A fixed percentage factor for avoided line losses (if any) will be determined by the Company for each QF based upon the locations of the QF on the Company's distribution system and applicable voltage level.

2. Determination of Billing Capacity:

- A. The billing capacity in any month shall be based upon the KW capacity supplied by the QS during that month or a previous month valued at a rate equal to the Company's respective Full Requirements Wholesale Power Supplier's avoided cost of the same amount of capacity during the relevant period as calculated in accordance with FPSC Rule 25-17.0832, F.A.C. and reflected in the Full Requirements Wholesale Power Supplier's tariff on file with the FPSC.

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Florida Public Utilities Company  
F.P.S.C. Standard Offer Rate Schedule  
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Original Sheet No. 24.1

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*SOF Rate Schedule (Continued)*

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Continued from Sheet No. 24.0

2. Determination of Billing Capacity:

- A. The billing capacity in any month shall be based upon the KW capacity supplied by the QS during that month or a previous month valued at a rate equal to the Company's respective Full Requirements Wholesale Power Supplier's avoided cost of the same amount of capacity during the relevant period as calculated in accordance with FPSC Rule 25-17.0832, F.A.C. and reflected in the Full Requirements Wholesale Power Supplier's tariff on file with the FPSC.

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Florida Public Utilities Company  
F.P.S.C. Standard Offer Rate Schedule  
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Original Sheet No. 25

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*SOF Rate Schedule (Continued)*

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Continued from Sheet No. 24

3. Measurement

- A. The QS's capacity input shall be measured on a time-differentiated demand meter. A QS within the territory served by the Company shall be required to purchase from the Company hourly recording meters to measure their energy deliveries to the Company. Energy purchases from a QS outside the territory of the Company shall be measured as the quantities scheduled for interchange to the Company by the Company's Full Requirements Wholesale Power Supplier.

4. Charges to the QS:

- A. Customer charge for meter reading, billing and other administrative costs shall be equal to the currently monthly customer facilities charge as set forth in the rate schedule which is applicable to the QS for the purchase of energy from the Company.
- B. Interconnection Charge for Non-Variable Utility Expenses  
The QS shall bear the cost required for the interconnecting the QS, including metering. The QS shall have the option of payment in full for interconnection or making equal monthly installment payments with interest over a period not exceeding 36 months toward the full cost of such interconnection. In the event that the QS elects the monthly installment option, the initial contract term of service shall not be less than the total months over which such installment payments are to be made.
- C. Interconnection Charge for Variable Utility Expenses  
The Qualifying Seller shall be billed monthly for the cost of variable utility expenses associated with the operation and maintenance of the interconnection facilities. These include (a) the Company's inspections of the interconnection facilities and (b) maintenance of any equipment beyond that which would be required to provide normal electric service to the Qualifying Seller if no sales to the Company were involved.
- D. Taxes and Assessments  
The Qualifying Seller shall be billed monthly an amount equal to any taxes, assessments or other impositions, for which the Company is liable as a result of its purchases of Firm Capacity and Energy produced by the Qualifying Seller. In the event the Company receives a tax benefit as a result of its purchases of Firm Capacity and Energy produced by the Qualifying Seller, the Qualifying Seller shall be entitled to a refund in an amount equal to such benefit.

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Florida Public Utilities Company  
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Original Sheet No. 26

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*SOF Rate Schedule (Continued)*

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Continued from Sheet No. 25

Term of Service

1. It shall be the QS's responsibility to inform the Company in writing of any change in the QS's electric generating capacity.
2. Any electric service delivered by the Company to the QS shall be metered separately and billed under the rate schedule applicable to the Company's other customers with similar load characteristics. The terms and conditions of the Company's standard rate schedule applicable to the class of service shall pertain.
3. A security deposit will be required in accordance with FPSC Rules 25-17.082(5) and 25-6.97, F.A.C., and the following:
  - A. In the first year of operation, the security deposit shall be based upon the singular month in which the Qualifying Seller's projected purchases from the Company exceed, by the greatest amount, the Company's estimated purchases from the Qualifying Seller. The security deposit should be equal to twice the amount of the difference estimated for that month. The deposit shall be required upon interconnection.
  - B. For each year thereafter, a review of the actual sales and purchases between the Qualifying Seller and the Company shall be conducted to determine the actual month of maximum difference. The security deposit shall be adjusted to equal twice the greatest amount by which the actual monthly purchases by the Qualifying Seller exceed the actual sales to the Company in that month.
4. The Company shall specify the point of interconnection and voltage level.
5. The Company will, under the provisions of this schedule, require an agreement with the Qualifying Seller upon the Company's filed Standard Interconnection Agreement for parallel operation between the Qualifying Seller and the Company. The Qualifying Seller shall recognize that its generation facility may exhibit unique interconnection requirements which will be separately evaluated, modifying the Company's General Standards for Safety and Interconnection where applicable.
6. Service under this Schedule is subject to the rules and regulations of the Company and the rules and regulations of the Florida Public Service Commission.

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Florida Public Utilities Company  
F.P.S.C. Standard Offer Rate Schedule  
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Original Sheet No. 27

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*SOF Rate Schedule (Continued)*

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Continued from Sheet No. 26

Special Provisions

1. Special contracts deviating from the above Schedule are allowable provided they are agreed to by the Company and approved by the Florida Public Service Commission.
2. For a Qualifying Seller in the Company's service territory that wishes to contract with another electric utility which is directly or indirectly interconnected with the Company, the Company will, upon request, provide information on the availability and the terms and conditions of the specified desired transmission service.
3. As a means of protecting the Company's customers from the possibility of a Qualifying Seller not coming on line as provided for under an executed Standard Offer Contract and in order to provide the Company with additional and immediately available funds for its use to secure replacement and reserve power in the event that the QS fails to successfully complete construction and come on line in accord with the executed Standard Offer Contract, the Company requires that a cash completion security deposit equal to \$20 per KW of the nameplate capacity of the QS's generator unit(s) at the time the Company's Standard Offer Contract is executed by the QS. At the election of the QS, the completion security deposit may be phased in such that one half of the total deposit due is paid at contract execution and the remainder within 12 months after contract execution.

Depending on the nature of the QS's operation, financial health and solvency, and its ability to meet the terms and conditions of the Company's Standard Offer Contract, one of the following, at the Company's discretion, may be used as an alternative to a cash deposit as a means of securing the completion of the QS's project in accord with the executed Standard Offer Contract:

1. an unconditional, irrevocable direct pay letter; or
2. surety bond; or
3. other means acceptable to the Company.

The Company will cooperate with each QS seeking an alternative to a cash security deposit as an acceptable means of securing the completion of the QS's installation in accord with an executed Standard Offer Contract. The Company will endeavor in good faith to accommodate an equivalent to a cash security deposit which is in the best interests of both the QS and the Company's customers.

In the case of a governmental solid waste QS, pursuant to Subsection 366.91 (3), Florida Statutes and FPSC Rule 25-17.091, F.A.C., the following will be acceptable to the Company.

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Florida Public Utilities Company  
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*SOF Rate Schedule (Continued)*

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Continued from Sheet No. 27

The unsecured promise of a municipal, county, or state government that it will pay the actual damages incurred by the Company because the governmental Facility fails to come on line prior to the planned in-service date for the Avoided Unit or Resource.

4. Given the terms and conditions ultimately set in the Standard Offer Contract, additional security requirements may be specified by the Company.
5. Company may decline to execute a Standard Offer Contract and seek relief from the FPSC, in accordance with FPSC Rule 5-17.0832(c), Florida Administrative Code, if the Company perceives that the offer will exceed the load requirements on its system or it obtains material evidence showing that because the qualifying facility is not financially or technically viable, it is unlikely that the committed capacity and energy would be made available to the utility by the date specified in the standard offer.

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Florida Public Utilities Company  
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*FLORIDA PUBLIC UTILITIES COMPANY*

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STANDARD OFFER CONTRACT FOR FIRM PURCHASES FROM  
SMALL QUALIFYING FACILITIES AND  
QUALIFYING RENEWABLE GENERATING FACILITIES  
WITNESSETH:

That, in consideration of the terms and covenants hereinafter contained and incorporated herein by reference, the parties hereto agree as follows:

1. The customer has a means of generating electric energy at the following location:

\_\_\_\_\_  
\_\_\_\_\_

and agrees to meet Florida Public Service Commission Rule 25-17.87, Interconnection and Standards. This rule outlines the general standards for safety and interconnection to Company lines and is attached hereto as Exhibit.

2. The generating plant is described as follows:

A. Qualifying small power producer \_\_ or cogenerator \_\_\_\_.

B. Power Source (solar, wind, steam, hydro, etc.)\_\_\_\_\_.

C. Manufacturer's Name and Address:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

D. Manufacturer's Reference Number, Type, Style, Model Number, etc.:

\_\_\_\_\_.

E. Manufacturers Serial Number:

\_\_\_\_\_.

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Florida Public Utilities Company  
F.P.S.C. Standard Offer Rate Schedule  
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Continued from Sheet 29

- F. Name Plate Rating:  
\_\_\_\_\_.
- G. Maximum Rate of Energy Delivery to Company \_\_\_\_ KVA.
- H. Normal Rate of Energy Delivery to Company \_\_\_\_ KVA.
- I. Firm Capacity Delivered to Company \_\_\_\_ KW.
- J. Normal Monthly Energy Delivery to Company \_\_\_\_ KWH.
- K. Other Pertinent Data:  
\_\_\_\_\_  
\_\_\_\_\_.
3. The Qualifying Facility agrees to abide by the terms and provisions of Rate Schedule SOF, which is attached hereto as an Exhibit, and included in Company's Standard Offer Rate Schedule on file with the Florida Public Service Commission.
4. Energy and capacity (if applicable) purchased by Company from Qualifying Facility under the terms of this contract will be paid for in accordance with Rate Schedule SOF as approved by the Florida Public Service Commission, which may be modified from time to time in accordance with applicable law.
5. Standby, maintenance and supplementary power for the operation of the electric generating system and associated cogeneration plant load, if applicable, will be supplied separately under the Company's applicable filed standard rate schedules.
6. The Qualifying Facility shall pay the Company on or before the effective date of this Agreement a charge of \_\_\_\_ (Dollars) for equipment modifications and services furnished solely due to the interconnection of the Qualifying facility's generator to the Company's system. The Qualifying Facility may, at its option, pay the above amount in \_\_\_\_ equal monthly installments beginning with the effective date of this Agreement. In such event Qualifying Facility agrees to pay Company by the 15<sup>th</sup> of each month \_\_\_\_ (Dollars) per month, plus interest at the 30-day Commercial Paper Rate as published in the Wall Street Journal, on the first business day of the month.

When Qualifying Facility has elected to make the above payment in installments, Qualifying Facility agrees to pay Company any amount which may be due Company by Qualifying facility on any account according to the terms of this Agreement. Qualifying Facility hereby waives all exemptions under the constitution and laws of the State of Florida, or any other state as to personal property and agrees to pay all costs of collecting any such amounts, including a reasonable attorney's fee if said amounts are not paid when due.

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Florida Public Utilities Company  
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Continued from Sheet No. 30

7. The metering system for the electric generating equipment will be installed by Company at Qualifying Facility's expense. The meter(s) for purchase of energy and capacity (if applicable) will be located to measure the net output of the generator or the net surplus of energy from the Qualifying Facility's installation.
8. If at any time Qualifying Facility desires to decrease or increase the capacity to be maintained by Qualifying facility as set forth in this Agreement, Qualifying Facility shall give written notice thereof, to Company and Company shall as soon thereafter as reasonably practical, submit to Qualifying Facility a proposal outlining the rates, terms and conditions under which such changes in capacity may be rendered subject to the rules, regulations and conditions under which Company may then be operating.
9. In the event the Qualifying Facility's maximum output of capacity to the Company at any time exceeds the capacity required to be maintained by ten percent (10%) or more Qualifying Facility shall be liable for all resulting damage to Company's facilities and equipment and Company may interrupt the service without notice to Qualifying Facility but shall be under no duty to do so.
10. Company reserves the right, subject to regulatory authority having jurisdiction, to limit, restrict or refuse service that may jeopardize the safe and proper operation of its distribution system and/or alterations in its contractual requirements of supply from its Full Requirements Wholesale Power Supplier that may jeopardize service to existing Customers and/or existing Qualifying Facilities. Therefore, from time to time, Company, upon prior notice to Qualifying Facility may decline to accept Energy and/or Capacity delivered hereunder during any given hour, due to an emergency condition, or due to the reasons set forth below. Company shall not be obligated to purchase and may require curtailed or reduced deliveries of Energy and/or Capacity, to the extent necessary to maintain the reliability and integrity of any part of Company's system, or if Company determines that a failure to do so is likely to endanger life or property, or is likely to result in significant disruption of electric service to Company's customers. Company shall use commercially reasonable efforts to give Qualifying Facility as much prior notice as reasonably practicable of its intent to refuse, curtail or reduce its acceptance of Energy and/or Capacity pursuant to this Section 10 and will use commercially reasonable efforts to minimize the frequency and duration of such occurrences. Such interruptions shall not constitute a breach of this Agreement.

Issued by: Jeffry Householder, President

Effective: NOV 11 2016

Florida Public Utilities Company  
F.P.S.C. Standard Offer Rate Schedule  
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Original Sheet No. 32.1

Continued from Sheet No. 31

11. The Company reserves the right, but assumes no liability for failure so to do, to discontinue service from the Qualifying Facility for cause as follows:

- A. Without notice if a dangerous condition exists as a result of energy delivered by the Qualifying Facility to Company.
- B. After five (5) working days' notice in writing, for a violation of the Company's Tariff Rules and Regulations which Qualifying Facility refuses or neglects to correct.

When service has been disconnected for any of the reasons set forth in this Section 11, Company shall not be required to restore service until the following conditions have been met by the Qualifying Facility:

- A. Where service was discontinued without notice, the dangerous condition shall be removed and, if the Qualifying Facility had been warned of the condition a reasonable time before the discontinuance and had failed to remove the dangerous condition, a reconnection fee of fifty-two dollars (\$52.00) shall be paid.
- B. Where service was discontinued with notice, the violation of Section 12 of this Agreement shall be corrected and a reconnection fee of fifty-two dollars (\$52.00) shall be paid.

12. Notwithstanding any other provisions of this Agreement, Company shall have the right to terminate this Agreement, by written notice to Seller giving the reasons therefore, without cause, liability or obligation, if any approval from any Governmental Body having jurisdiction thereof necessary for Company to enter into this Agreement or to allow full recovery by Company from its customers of all payments required to be made by this Agreement shall no longer be in full force and effect, and some portion or all of such payments shall have become disqualified for such recovery in contravention of FPSC Order No. 25668, issued February 23, 1992.

13. Liability insurance in the amount of two million seven hundred fifty thousand dollars (\$2,750,000.00) per occurrence for bodily injury, death, or property damage indemnifying Company against loss or liability due to the presence or operation of Qualifying Facility's generator and interconnections shall be furnished by Qualifying Facility and certified by his agent annually and upon any change of policy.

14. With the exception of Workers' Compensation, Company shall be named as an additional insured under the Qualifying Facility's Insurance. The Qualifying Facility's Insurance shall be deemed primary to any coverage maintained by Company and shall provide, to extent allowed by law, for the waiver of any rights of subrogation against the Company. Any

Issued by: Jeffrey Householder, President

Effective: NOV 11 2016

Florida Public Utilities Company  
F.P.S.C. Standard Offer Rate Schedule  
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Original Sheet No. 32.2

Continued from Sheet No. 32.1

deductibles or retentions shall be the sole responsibility of the Qualifying Facility. Compliance by the Qualifying Facility with the provisions herein shall not serve as a limitation of Qualifying Facility's liability. Failure to comply with all of these provisions will not serve as a waiver by the Company of any rights with regard to coverage required by this Agreement.

15. A surety bond in an amount not to exceed two hundred fifty thousand dollars (\$250,000) shall be required to guarantee repayment to Company any monies that may be due Company for Interconnection costs borne by Company in Qualifying Facility's behalf. If applicable, a second surety bond in an amount not to exceed one hundred thousand dollars (\$100,000) shall be required to guarantee capacity payment refunds and penalties in the event of Qualifying Facility's failure to deliver capacity in accordance with this agreement.

Issued by: Jeffry Householder, President

Effective: NOV 11 2016



Florida Public Utilities Company  
F.P.S.C. Standard Offer Rate Schedule  
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Original Sheet No. 33

16. Qualifying Facility agrees to accept and be bound by all rules and regulations of Company in connection with the service hereby covered, which are now or may hereafter be filed with, issued or promulgated by the Florida Public Service.
17. Qualifying Facility \_\_\_ is/\_\_\_ is not directly interconnected to Company. If Qualifying Facility is not directly interconnected to Company amounts of energy delivered to the wheeling utility in excess the amount scheduled for delivery to Company shall be classified as inadvertent energy. Such inadvertent energy flows shall be resolved between the Qualifying Facility and the wheeling utility and will not affect the energy scheduled and delivered from the wheeling utility to the Company. Company shall only be responsible for payments for energy scheduled for delivery, delivered to, and metered at, the delivery point between the wheeling utility and the Company.
18. Whenever written notice is required to be given by either party it shall be by registered mail, return receipt required. Any period designated for notice shall commence on the date of mailing.
19. This Agreement shall become effective on the \_\_\_\_\_ day of \_\_\_\_\_, and shall be in full force and effect for a period of \_\_\_\_\_ (years) and shall continue thereafter until terminated by either party by written notice sixty (60) days prior to termination. This Agreement shall be binding upon and extend to the heirs, or successors and assigns of the respective parties hereto shall not be assigned without prior written consent of Company.
20. This Agreement is to be consummated only by the written approval of Company as required below; no other contract and no other agreement, consideration or stipulation modifying or changing the tenure thereof shall be recognized or binding unless they are so approved.
21. Any notice required or permitted to be given hereunder shall be in writing and shall be: (i) personally delivered; (ii) transmitted by posted prepaid certified mail; (iii) transmitted by a recognized overnight courier service; or (iv) transmitted by electronic mail with a request for electronic receipt confirmation, to the receiving Party as follows, as elected by the Party giving such notice:

<u>For Qualifying Facility</u>	<u>For Company</u>
With a copy to:	P. Mark Cutshaw Florida Public Utilities Company 1750 S. 14th Street, Suite 200 Fernandina Beach, Florida 32034 <a href="mailto:mcutshaw@fpuc.com">mcutshaw@fpuc.com</a>

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Effective: NOV 11 2016



Florida Public Utilities Company  
F.P.S.C. Standard Offer Rate Schedule  
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22. All notices and other communications shall be deemed to have been duly given on: (i) the date of receipt if delivered personally; (ii) the date of receipt if transmitted by mail; (iii) the date of receipt if transmitted by courier; or (iv) the date of transmission with confirmation if transmitted by electronic mail, whichever shall first occur. Any Party may change its address or other contact information for purposes hereof by notice to the other Party.
23. Within ten (10) days of execution, Company shall submit this Agreement to the FPSC in accordance with Rule 25-17.0825(1) (b), F.A.C. Qualifying Facility and Company each agree to abide by any and all applicable regulatory rulings or orders issued by the FPSC or any other Governmental Body having jurisdiction with regard to the matters governed by this Agreement.
24. This Agreement may be executed in two (2) or more counterparts, all of which will be considered one and the same Agreement and each of which will be deemed an original.

IN WITNESS THEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officers.

Attest:

**FLORIDA PUBLIC UTILITIES COMPANY**

\_\_\_\_\_

By \_\_\_\_\_  
Title \_\_\_\_\_

Date \_\_\_\_\_

Attest:

**("QUALIFYING FACILITY")**

\_\_\_\_\_

By \_\_\_\_\_  
Title \_\_\_\_\_

Date \_\_\_\_\_

Issued by: Jeffry Householder, President

Effective: NOV 11 2016

# Item 14

State of Florida



## Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD  
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

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**DATE:** May 23, 2018

**TO:** Office of Commission Clerk (Stauffer)

**FROM:** Division of Engineering (M. Watts) *AM*  
Division of Economics (Friedrich) *MF* *PD* *SH*  
Office of the General Counsel (Janjic, Crawford) *JSC*

**RE:** Docket No. 20170155-WU – Application for grandfather water certificate in Leon County and application for pass through increase of regulatory assessment fees, by Seminole Waterworks, Inc.

**AGENDA:** 06/05/18 Regular Agenda – Proposed Agency Action for Issues 3-6 - Interested Persons May Participate

**COMMISSIONERS ASSIGNED:** All Commissioners

**PREHEARING OFFICER:** Brown

**CRITICAL DATES:** None

**SPECIAL INSTRUCTIONS:** None

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### Case Background

On June 20, 2017, the Board of County Commissioners of Leon County (County) passed and adopted Resolution No. R17-12 (Resolution), transferring regulation of the privately-owned, for-profit water and wastewater utilities in Leon County to the Florida Public Service Commission (Commission). Effective upon the adoption of the Resolution, all non-exempt water and wastewater systems in the County became subject to the provisions of Chapter 367, Florida

Statutes (F.S.) By Commission Order No. PSC-2017-0357-FOF-WS, the Commission acknowledged the Resolution.<sup>1</sup>

Pursuant to Section 367.171(2)(b), F.S., each utility engaged in the operation or construction of a system shall be entitled to receive a certificate for the area served by such utility on the day the chapter becomes applicable to the utility. On July 19, 2017, Seminole Waterworks, Inc. (Seminole or Utility) filed an application for a certificate under grandfather rights to provide water service in Leon County pursuant to Section 367.171(2)(b), F.S., and Rule 25-30.035, Florida Administrative Code (F.A.C.).

The area served by Seminole consists of six separate neighborhood water systems located in Leon County. Leon County granted Rowe Utilities, Inc. franchises for these systems in the early 1980s. These franchise areas were transferred to Seminole at the March 8, 2016, Leon County Board of County Commissioners regular public meeting. Collectively, these systems currently serve approximately 690 residential customers. Wastewater service is provided either by septic tank or the City of Tallahassee. The Utility's service area is located in the Northwest Florida Water Management District.

This recommendation addresses the application for a grandfather water certificate, and rates and charges. The Commission has jurisdiction pursuant to Section 367.171, F.S.

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<sup>1</sup>Order No. PSC-2017-0357-FOF-WS, issued September 20, 2017, in Docket No. 20170171-WS, *In re: Resolution of the Board of County Commissioners of Leon County declaring Leon County subject to the provisions of Section 367, Florida Statutes.*



### **Discussion of Issues**

**Issue 1:** Should Seminole Waterworks, Inc.'s application for a grandfather water certificate in Leon County be acknowledged?

**Recommendation:** Yes. Seminole's application should be acknowledged and the Utility should be issued Certificate No. 672-W, effective June 20, 2017, to serve the territory described in Attachment A. The resultant order should serve as Seminole's certificate and should be retained by the Utility. (M. Watts)

**Staff Analysis:** The Utility's application for a certificate under grandfather rights to provide water service in Leon County is in compliance with Section 367.171(2)(b), F.S., and Rule 25-30.035, F.A.C. The application contains warranty deeds as proof of ownership of the land on which the Utility's facilities are located, accurate territory descriptions, and adequate service territory and system maps. The territory descriptions are provided in Attachment A.

As stated in the case background, the area served by Seminole consists of six separate water systems located in Leon County. The Utility does not currently have any outstanding citations, violations, or consent orders on file with the Florida Department of Environmental Protection.

The Utility submitted its 2017 Annual Report pursuant to Rule 25-30.110, F.A.C., and is aware of its obligation to remit regulatory assessment fees (RAFs) in accordance with Order No. PSC-2018-0075-PAA-WU, issued February 12, 2018, in the instant docket, and pursuant to Rule 25-30.120, F.A.C. In addition, the Utility is aware that it must maintain its books and records according to the National Association of Regulatory Commissioners' Uniform System of Accounts.

Based on the above, staff recommends that Seminole be granted Certificate No. 672-W to serve the territory described in Attachment A. The resultant order should serve as Seminole's certificate and should be retained by the Utility.

**Issue 2:** What rates and charges should be approved for Seminole Waterworks, Inc.?

**Recommendation:** The Utility's monthly service rates and convenience charge that were in effect when Leon County transferred jurisdiction to the Commission, shown on Schedule No. 1, should be approved. The rates should be effective for services rendered on or after the stamped approval date on the tariff pursuant to Rule 25-30.475, F.A.C. The Utility should be required to charge the approved rates and convenience charge until authorized to change them by this Commission in a subsequent proceeding. (Friedrich)

**Staff Analysis:** According to its application, Seminole's current rates were established December 1, 2015, by Rowe Utilities, Inc., and Seminole has been charging the same rates since acquisition. The Utility's current monthly service rates include a base facility charge and inclining block gallonage charges. When Seminole acquired the Utility from Rowe Utilities, Inc. in February 2016, it implemented a convenience charge of \$2.60 consistent with other utilities regulated by this Commission that are managed by U.S. Water.<sup>2</sup> Staff believes the Utility's current monthly rates and convenience charge are reasonable and should be approved.

Additionally, within its application, the Utility indicated that it currently has miscellaneous service, late payment, and non-sufficient funds (NSF) charges in place, as well as customer deposits. However, some of these charges and deposits do not appear to be based on cost or customer usage consistent with Commission practice. Staff's recommendations with respect to these charges and deposits are discussed in Issues 3 through 6.

Based on the above, the Utility's monthly service rates and convenience charge that were in effect when Leon County transferred jurisdiction to the Commission, shown on Schedule No. 1, should be approved. The rates should be effective for services rendered on or after the stamped approval date on the tariff pursuant to Rule 25-30.475, F.A.C. The Utility should be required to charge the approved rates until authorized to change them by this Commission in a subsequent proceeding.

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<sup>2</sup>Order Nos. PSC-15-0188-TRF-WU, issued May 6, 2015, in Docket No. 20150065-WU, *In re: Request for approval of amendment to tariff for miscellaneous service charges in Brevard County by Brevard Waterworks, Inc.* and PSC-15-0184-TRF-WS, issued May 6, 2015, in Docket No. 20150061-WS, *In re: Request for approval of amendment to tariff for miscellaneous service charges in Lake County by Lakeside Waterworks, Inc.*



**Issue 3:** Should the miscellaneous service charges requested by Seminole Waterworks, Inc. be approved?

**Recommendation:** Yes. The Utility's requested miscellaneous service charges should be approved and are identified in Table 3-5. The charges should be effective on or after the stamped approval date on the tariff pursuant to Rule 25-30.475, F.A.C. In addition, the approved charges should not be implemented until staff has approved the proposed customer notice and the notice has been received by the customers. The Utility should provide proof of the date notice was given within 10 days of the date of the notice. (Friedrich)

**Staff Analysis:** Seminole's current and requested miscellaneous service charges are displayed in Table 3-5. The Utility's current miscellaneous service charges were in place at the time of acquisition. Within its application, the Utility acknowledged that some of its existing miscellaneous service charges are higher than comparable utilities. As a result, Seminole indicated that it is not opposed to revising these charges to be consistent with Commission practice and the Utility's sister utilities. Section 367.091, F.S., authorizes the Commission to change miscellaneous service charges. Seminole's request was accompanied by its reason for requesting the charges as well as the cost justification required by Section 367.091(6), F.S.

The cost justification provided reflects the same labor and transportation costs relied on to set miscellaneous service charges for the Utility's sister companies.<sup>3</sup> The calculations for the Utility's requested miscellaneous service charges are shown in Tables 3-1 through 3-4. Table 3-5 displays the Utility's current and requested miscellaneous service charges rounded up to the nearest tenth.

### **Initial Connection Charge**

The initial connection charge is levied for service initiation for new customers. A Seminole representative makes one trip when performing the service of an initial connection. Based on labor and transportation to and from the service territory, staff recommends initial connection charges of \$31.10 for normal hours and \$36.20 for after hours. Staff's calculations are shown below in Table 3-1.

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<sup>3</sup>Order Nos. PSC-20170-0491-TRF-WS, issued December 28, 2017, in Docket No. 20170244-WS, *In re: Request for approval of amendment to tariff for miscellaneous service charges in Lake County by Lakeside Waterworks, Inc.* and PSC-2017-0334-PAA-WS, issued August 23, 2017, in Docket No. 20160222-WS, *In re: Application for staff-assisted rate case in Highlands County by LP Waterworks.*

**Table 3-1**  
**Initial Connection Charge Calculation**

Activity	Normal Hours Cost	Activity	After Hours Cost
Administrative Labor (\$28/hr x 1/4hr)	\$7.00	Administrative Labor (\$28/hr x 1/4hr)	\$7.00
Field Labor (\$30.42/hr x 1/3 hr)	\$10.14	Field Labor (\$45.63/hr x 1/3 hr)	\$15.21
Transportation (\$0.535/mile x 26 miles-to/from)	\$13.91	Transportation (\$0.535/mile x 26 miles-to/from)	\$13.91
Total	\$31.05	Total	\$36.12

### **Normal Reconnection Charge**

A normal reconnection charge is levied for the reconnection of service subsequent to a customer requested disconnection. A normal reconnection requires two trips, which includes one to turn service off and the other to turn service on. Staff recommends normal reconnection charges of \$57.10 for normal hours and \$64.70 for after hours. Staff's calculations are shown below in Table 3-2.

**Table 3-2**  
**Normal Reconnection Charge Calculation**

Activity	Normal Hours Cost	Activity	After Hours Cost
Administrative Labor (\$28/hr x 1/4hr x 2)	\$14.00	Administrative Labor (\$28/hr x 1/4hr)	\$14.00
Field Labor (\$30.42/hr x 1/4 hr x 2)	\$15.21	Field Labor (\$45.63/hr x 1/4hr x 2)	\$22.81
Transportation (\$0.535/mile x 26 miles-to/from x 2)	\$27.82	Transportation (\$0.535/mile x 26 miles-to/from x 2)	\$27.82
Total	\$57.03	Total	\$64.63

### **Violation Reconnection Charge**

The violation reconnection charge is levied prior to reconnection of an existing customer after discontinuance of service for cause. The service performed for violation reconnection requires two trips, which includes one trip to turn off service and a subsequent trip to turn on service once the violation has been remedied. Staff recommends violation reconnection charges of \$57.10 for normal hours and \$64.70 for after hours. Staff's calculations are shown below in Table 3-3.



**Table 3-3**  
**Violation Reconnection Charge Calculation**

Activity	Normal Hours Cost	Activity	After Hours Cost
Administrative Labor (\$28/hr x 1/4hr x 2)	\$14.00	Administrative Labor (\$28/hr x 1/4hr x 2)	\$14.00
Field Labor (\$30.42/hr x 1/4 hr x 2)	\$15.21	Field Labor (\$45.63/hr x 1/4 hr x 2)	\$22.81
Transportation (\$0.535/mile x 26 miles-to/from) x 2	\$27.82	Transportation (\$0.535/mile x 26 miles-to/from) x 2	\$27.82
Total	\$57.03	Total	\$64.63

### **Premises Visit Charge**

The premises visit charge is levied when a service representative visits the premises at the customer's request for complaint resolution and the problem is found to be the customer's responsibility. In addition, the premises visit charge can be levied when a service representative visits a premises for the purpose of discontinuing service for nonpayment of a due and collectible bill, and does not discontinue service because the customer pays the service representative or otherwise makes satisfactory arrangements to pay the bill. A premises visit requires one trip. Staff recommends premises visit charges of \$31.10 for normal hours and \$36.20 for after hours. Staff's calculations are shown below in Table 3-4.

**Table 3-4**  
**Premises Visit Charge Calculation**

Activity	Normal Hours Cost	Activity	After Hours Cost
Administrative Labor (\$28.00/hr x 1/4hr)	\$7.00	Administrative Labor (\$28.00/hr x 1/4hr)	\$7.00
Field Labor (\$30.42/hr x 1/3 hr)	\$10.14	Field Labor (\$45.63/hr x 1/3 hr)	\$15.21
Transportation (\$0.535/mile x 26 miles-to/from)	\$13.91	Transportation (\$0.535/mile x 26 miles-to/from)	\$13.91
Total	\$31.05	Total	\$36.12

**Table 3-5**  
**Miscellaneous Service Charges**

	Current	Staff Recommended	
	Normal and After Hours	Normal Hours	After Hours
Initial Connection Charge	\$50.00	\$31.10	\$36.20
Normal Reconnection Charge	\$50.00	\$57.10	\$64.70
Violation Reconnection Charge	\$165.00	\$57.10	\$64.70
Premises Visit Charge	\$10.00	\$31.10	\$36.20

**Conclusion**

Based on the above, the Utility's requested miscellaneous service charges should be approved and are identified in Table 3-5 above. The charges should be effective on or after the stamped approval date on the tariff pursuant to Rule 25-30.475, F.A.C. In addition, the approved charges should not be implemented until staff has approved the proposed customer notice and the notice has been received by the customers. The Utility should provide proof of the date notice was given no less than 10 days after the date of the notice.



**Issue 4:** Should Seminole Waterworks, Inc.'s request to implement a late payment charge of \$6.50 be approved?

**Recommendation:** Yes. Seminole's request to implement a \$6.50 late payment charge should be approved. Seminole should be required to file a proposed customer notice to reflect the Commission-approved charge. The approved charge should be effective on or after the stamped approval date on the tariff sheet pursuant to Rule 25-30.475(1), F.A.C. In addition, the approved charge should not be implemented until staff has approved the proposed customer notice and the notice has been received by customers. The Utility should provide proof of the date notice was given no less than 10 days after the date of the notice. (Friedrich)

**Staff Analysis:** The Utility is requesting a \$6.50 late payment charge to recover the cost of supplies, labor, and RAFs associated with processing late payment notices. The Utility's current late payment charge is 10 percent of the total bill owed. However, the Utility is requesting a fixed charge for its late payment charge consistent with Commission practice and its sister utilities managed by U.S. Water. The purpose of this charge is not only to provide an incentive for customers to make timely payment, thereby reducing the number of delinquent accounts, but also to place the cost burden of processing delinquent accounts solely upon those who are cost causers. Section 367.091, F.S., authorizes the Commission to establish, increase, or change a rate or charge other than monthly rates or service availability charges.

Seminole calculated the actual costs for its late payment charge to be \$8.07. The Utility indicated that it will take approximately 15 minutes to process each delinquent account. The delinquent customer accounts will be processed by the administrative contract employee with an hourly salary of \$28.00, resulting in a labor cost of \$7.00 ( $\$28.00 \times 0.25\text{hr}$ ). This is consistent with prior Commission decisions where the Commission has allowed 10-15 minutes per account per month for the administrative labor associated with processing delinquent customer accounts.<sup>4</sup> However, \$8.07 would be the highest late payment charge amongst all other water and wastewater utilities regulated by the Commission.<sup>5</sup> Therefore, the Utility is requesting a charge of \$6.50, consistent with recent Commission decisions. The Utility's calculation for its requested late payment charge is shown below in Table 4-1.

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<sup>4</sup>Order Nos. PSC-16-0041-TRF-WU, issued January 25, 2016, in Docket No. 20150215-WU, *In re: Request for approval of tariff amendment to include miscellaneous service charges for the Earlene and Ray Keen Subdivisions, the Ellison Park Subdivision and the Lake Region Paradise Island Subdivision in Polk County, by Keen Sales, Rentals and Utilities, Inc.* and PSC-15-0569-PAA-WS, issued December 16, 2015, in Docket No. 20140239-WS, *In re: Application for staff-assisted rate case in Polk County by Orchid Springs Development Corporation.*

<sup>5</sup>Order Nos. PSC-14-0105-TRF-WS, issued February 20, 2014, in Docket No. 20130288-WS, *In re: Request for approval of late payment charge in Brevard County by Aquarina Utilities, Inc.*; PSC-15-0535-PAA-WU, issued November 19, 2015, in Docket No. 20140217-WU, *In re: Application for staff-assisted rate case in Sumter County by Cedar Acres, Inc.*; and PSC-15-0569-PAA-WS, issued December 16, 2015, in Docket No. 20140239-WS, *In re: Application for staff-assisted rate case in Polk County by Orchid Springs Development Corporation.*

**Table 4-1**  
**Late Payment Charge**

Labor	\$7.00
Supplies	\$0.22
Postage	\$0.49
Markup for RAFs	\$0.36
Total	\$8.07

Source: Utility's Cost Justification

Based on the above, Seminole's request to implement a \$6.50 late payment charge should be approved. Seminole should be required to file a proposed customer notice to reflect the Commission-approved charge. The approved charge should be effective on or after the stamped approval date on the tariff sheet pursuant to Rule 25-30.475(1), F.A.C. In addition, the approved charge should not be implemented until staff has approved the proposed customer notice and the notice has been received by customers. The Utility should provide proof of the date notice was given no less than 10 days after the date of the notice.



**Issue 5:** Should Seminole Waterworks, Inc. be authorized to collect NSF Charges?

**Recommendation:** Yes. Seminole should be authorized to collect NSF charges. Staff recommends that the Utility revise its tariffs to reflect the NSF charges currently set forth in Section 68.065, F.S. The NSF charges should be effective on or after the stamped approval date on the tariff sheets pursuant to Rule 25-30.475(1), F.A.C. Furthermore, the charges should not be implemented until staff has approved the proposed customer notice and the notice has been received by customers. The Utility should provide proof of the date the notice was given within 10 days of the date of the notice. (Friedrich)

**Staff Analysis:** Seminole currently has existing NSF charges in place. However the Utility is requesting NSF charges as set forth in Section 68.065(2), F.S. to be consistent with Commission practice and its sister utilities managed by U.S. Water. Section 367.091, F.S., requires rates, charges, and customer service policies to be approved by the Commission. The Commission has authority to establish, increase, or change a rate or charge. Staff believes that Seminole should be authorized to collect NSF charges consistent with Section 68.065, F.S., which allows for the assessment of charges for the collection of worthless checks, drafts, or orders of payment. As currently set forth in Section 68.065(2), F.S., the following NSF charges may be assessed:

1. \$25, if the face value does not exceed \$50,
2. \$30, if the face value exceeds \$50 but does not exceed \$300,
3. \$40, if the face value exceeds \$300,
4. or five percent of the face amount of the check, whichever is greater.

Approval of NSF charges is consistent with prior Commission decisions.<sup>6</sup> Furthermore, NSF charges place the cost on the cost-causer, rather than requiring that the costs associated with the return of the NSF checks be spread across the general body of ratepayers. As such, Seminole should be authorized to collect NSF charges. Staff recommends that Seminole revise its tariff sheets to reflect the NSF charges currently set forth in Section 68.065, F.S. The NSF charges should be effective on or after the stamped approval date on the tariff sheet pursuant to Rule 25-30.475(1), F.A.C. Furthermore, the NSF charges should not be implemented until staff has approved the proposed customer notice and the notice has been received by customers. The Utility should provide proof of the date the notice was given within 10 days of the date of the notice.

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<sup>6</sup>Order Nos. PSC-14-0198-TRF-SU, issued May 2, 2014, in Docket No. 20140030-SU, *In re: Request for approval to amend Miscellaneous Service charges to include all NSF charges by Environmental Protection Systems of Pine Island, Inc.* and PSC-13-0646-PAA-WU, issued December 5, 2013, in Docket No. 20130025-WU, *In re: Application for increase in water rates in Highlands County by Placid Lakes Utilities, Inc.*



**Issue 6:** Should the requested initial customer deposits for Seminole Waterworks, Inc. be approved?

**Recommendation:** Yes. The appropriate initial customer deposit is \$69.14 for the residential 5/8 inch x 3/4 inch meter size. The initial customer deposit for all other residential meter sizes and all general service meter sizes should be two times the average estimated bill. The approved customer deposits should be effective for connections made on or after the stamped approval date on the tariff sheets pursuant to Rule 25-30.475, F.A.C. The Utility should be required to collect the approved initial customer deposits until authorized to change them by the Commission in a subsequent proceeding. (Friedrich)

**Staff Analysis:** Rule 25-30.311, F.A.C., contains criteria for collecting, administering, and refunding customer deposits. Rule 25-30.311(1), F.A.C., requires that each company's tariff shall contain its specific criteria for determining the amount of initial deposits. Seminole currently has an initial customer deposit of \$50. However, this amount does not cover two months' average bills. Customer deposits are designed to minimize the exposure of bad debt expense for the Utility and, ultimately, the general body of rate payers. In addition, collection of customer deposits is consistent with one of the fundamental principles of rate making—ensuring that the cost of providing service is recovered from the cost causer.

Rule 25-30.311(7), F.A.C., authorizes utilities to collect new or additional deposits from existing customers not to exceed an amount equal to the average actual charge for water and/or wastewater service for two billing periods for the 12-month period immediately prior to the date of notice. The two billing periods reflect the lag time between the customer's usage and the Utility's collection of the revenues associated with that usage. Commission practice has been to set initial customer deposits equal to two months' bills based on the average consumption for a 12-month period for each class of customers.<sup>7</sup> The Utility indicated that the average monthly residential usage is 4,558 gallons per customer. Therefore, the average residential monthly bill is approximately \$34.57.

Based on the above, the appropriate initial customer deposit is \$69.14 for the residential 5/8 inch x 3/4 inch meter size. The initial customer deposit for all other residential meter sizes and all general service meter sizes should be two times the average estimated bill. The approved customer deposits should be effective for connections made on or after the stamped approval date on the tariff sheets pursuant to Rule 25-30.475, F.A.C. The Utility should be required to collect the approved initial customer deposits until authorized to change them by the Commission in a subsequent proceeding.

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<sup>7</sup>Order Nos. PSC-2017-0428-PAA-WS, issued November 7, 2017, in Docket No. 20160195-WS, *In re: Application for staff-assisted rate case in Lake County by Lakeside Waterworks, Inc.* and PSC-17-0113-PAA-WS, issued March 28, 2017, in Docket No. 20130105-WS, *In re: Application for certificates to provide water and wastewater service in Hendry and Collier Counties, by Consolidated Services of Hendry & Collier, LLC.*

**Issue 7:** Should this docket be closed?

**Recommendation:** If no person whose substantial interests are affected by the proposed agency action portion of this recommendation files a protest within 21 days of the issuance of the order, a consummating order should be issued. The docket should remain open for staff's verification that the revised tariff sheets have been filed by the Utility and approved by staff. Once this action is complete, this docket should be closed administratively. (Janjic, Crawford)

**Staff Analysis:** If no person whose substantial interests are affected by the proposed agency action portion of this recommendation files a protest within 21 days of the issuance of the order, a consummating order should be issued. The docket should remain open for staff's verification that the revised tariff sheets have been filed by the Utility and approved by staff. Once this action is complete, this docket should be closed administratively.



DESCRIPTION OF TERRITORY SERVED

**Brewster Estates:**

Commence at the Southwest corner of Section 22 , Township 1 North, Range 1 East, Leon County, Florida, thence run North 89° 50' 08" East 1,630.54 feet along the section line to the Point of Beginning; then continue North 89° 50' 08" East 369.44 feet, thence North 00° 03' 37" East 103.10 feet, continue North 00° 03' 59" East 1,138.90 feet; thence South 89° 47' 25" East 70.96 feet , thence run North 00° 48' 14" West 600.75 feet, thence run South 89° 28' 22" East 579.73 feet, thence run North 00° 13' 17" East 594.69 feet, thence run North 89° 06' 29" East 43.61 feet, thence run North 03° 45' 23" West 230.41 feet, thence run North 89° 32' 05" West 208.55 feet , thence run South 00° 44' 21" West 19.24 feet, thence run North 88° 45' 44" West 392.16 feet, thence run South 10° 53' 36" West 218.20 feet, thence run North 89° 21' 44" West 397.73 feet, thence run South 00° 14' 14" West 655.39 feet, thence run North 89° 37' 07" West 1,355.00 feet, thence run South 00° 22' 53" West 316.79 feet, thence run South 89° 53' 45" East 1,356.38 feet, thence run South 00° 02' 03" West 1,478.91 feet to the Point of Beginning.

**Buck Lake Estates:**

A subdivision lying in parts of Sections 23 and 26, Township 1 North, Range 1 East, Leon County, Florida, and lying beyond the city limits of Tallahassee, Florida.

Commence at the Southeast corner of Section 23, Township 1 North, Range 1 East, Leon County, Florida (Point of Beginning), and run thence North 00° 18' 00" East, 3,210.52 feet, thence South 67° 30' 00" West, 553.22 feet, thence South 00° 18' 1.17" West, 1,215.52 feet, thence North 89° 42' 00" West, 460.13 feet, thence South 00° 16' 30" West, 1,511.32 feet, thence South 88° 58' 49" West, 134.68 feet, thence North 89° 39' 12.56" West, 783.47 feet, thence South 00° 14' 30.82" West, 454.86 feet, thence South 89° 17' 5.08" East, 781.02 feet, thence North 84° 33' 20.21" East, 599.14 feet, thence North 76° 52' 22.72" East, 395.89 feet, thence North 78° 34' 00" East, 127.55 feet, thence North 0° 25' 53.24" East, 15.85 feet to the Point of Beginning.

**Meadow Hills:**

A utility service territory particularly described as follows: A tract or parcel of land lying in parts of Section 26, Township 1 North, Range 1 East, Leon County, Florida and lying beyond the City limits of Tallahassee, Florida.

Commence at the Northeast corner of Section 26, Township 1 North, Range 1 East, Leon County, Florida, and run South 03° 06' 34" West, 91.11 feet, to the Point of Beginning, thence South 00° 30' 00" West, 1,219.47 feet, thence North 89° 28' 00" West, 2,291.80 feet, thence South 01° 32' 40" West, 109.24 feet, thence North 89° 11' 55" West, 398.83 feet, thence North 40° 18' 53" West, 106.49 feet, thence North 88° 44' 51" West, 157.05 feet, thence North 01° 05' 58" East, 333.84 feet, thence South 89° 13 ' 45" East, 178.45 feet, thence North 01° 08' 23" East, 173.18 feet, thence North 89° 13' 41" West, 179.47 feet, thence North 01° 11' 06" East, 226.34 feet, thence North 88° 53' 54" West, 28.11 feet, thence North 15° 35' 38" West, 208.33 feet,



thence North 89° 00' 13" East, 122.59 feet, thence North 03° 32' 13" West, 170.65 feet, thence South 86° 27' 50" East, 219.37 feet, thence South 87° 09' 24" East, 266.08 feet, thence South 89° 02' 55" East, 1,102.32 feet, thence South 88° 18' 01" East, 193.33 feet, thence North 89° 36' 08" East, 213.07 feet, thence North 83° 48' 05" East, 208.73 feet, thence North 82° 24' 51" East, 197.62 feet, thence North 77° 12' 35" East, 213.31 feet, thence North 73° 47' 30" East, 64.90 feet, thence North 77° 01' 59" East, 205.19 feet, thence North 89° 15' 06" East, 20.04 feet to the Point of Beginning.

**North Lake Meadows:**

A subdivision located lying within Sections 19, 20, and 29, Township 2 North, Range 1 West, Leon County, Florida.

Commence from the Point of Beginning being the Southeast corner of Section 19, Township 2 North, Range 1 West, Leon County, Florida, and thence South 86° 29' 21.56" West, 239.9 feet, thence North 00° 09' 38.37" West, 348.72 feet, thence North 89° 59' 21.36" West, 650.76 feet, thence North 00° 35' 41.22" East, 908.85 feet, thence North 89° 36' 43.88" East, 658.38 feet, thence North 89° 36' 5.98" East, 1,115.21 feet, thence South 04° 04' 11.91" West, 304.08 feet, thence South 03° 42' 12.80" West, 223.82 feet, thence South 1° 49' 57.68" West, 249.25 feet, thence South 00° 55' 1.01" West, 468.33 feet, thence South 41° 03' 18.72" West, 14.17 feet, thence South 86° 51' 10.45" West, 192.75 feet, thence South 87° 00' 13.46" West, 203.14 feet, thence South 87° 27' 24.86" West, 193.67 feet, thence South 89° 31' 42.52" West, 241.93 feet, thence North 00° 26' 47.13" West, 31.38 feet to the Point of Beginning.

**Plantation Estates:**

A subdivision located within a portion of the East half of the East half of Section 17, Township 1 North, Range 2 East, Leon County, Florida.

Commence at the Northeast corner of Section 17, Township 1 North, Range 2 East, Leon County, Florida, and run thence South 00° 17' 48" East 1,439.85 feet; thence South 80° 08' 34" West 388.67 feet to the Point of Beginning. From said Point of Beginning continue South 80° 08' 34" West 944.56 feet; thence South 00° 13' 48" West 3,093.14 feet; thence South 75° 12' 50" East 63.95 feet; thence North 63° 37' 07" East 446.96 feet; thence North 00° 24' 56" East 161.70 feet; thence South 89° 49' 32" East 352.90 feet; thence South 00° 06' 43" East 133.76 feet; thence North 89° 53' 17" East 115.16 feet; thence South 00° 06' 09" East 99.55 feet; thence South 33° 09' 45" East 142.72 feet; thence North 89° 39' 55" East 319.32 feet; thence North 00° 00' 20" West 2,032.54 feet; thence South 89° 50' 36" West 431.26 feet; thence North 03° 17' 14" West 434.81 feet; thence North 04° 59' 07" East 800.18 feet to the Point of Beginning.

**Sedgefield:**

A utility service territory located within Section 19, Township 1 North, Range 2 East, and Section 24, Township 1 North, Range 1 East, more particularly described as follows:

Commence at the Southwest corner of Section 19, Township 1 North, Range 2 East, Leon County, Florida, and run thence North  $66^{\circ} 21' 25.10''$  East 99.21 feet to the Point of Beginning. From said Point of Beginning run North  $00^{\circ} 04' 20.44''$  West 1,599.73 feet; thence North  $89^{\circ} 59' 21.00''$  West 9.55 feet; thence North  $00^{\circ} 04' 30.0''$  West 468.17 feet; thence South  $89^{\circ} 51' 19.20''$  West 1,071.46 feet; thence South  $00^{\circ} 06' 44.70''$  East 2,059.79 feet; thence South  $89^{\circ} 42' 46.55''$  East 1,079.61 feet to the Point of Beginning.

**FLORIDA PUBLIC SERVICE COMMISSION**

**authorizes  
Seminole Waterworks, Inc.  
pursuant to  
Certificate Number 672-W**

to provide water service in Leon County in accordance with the provisions of Chapter 367, Florida Statutes, and the Rules, Regulations, and Orders of this Commission in the territory described by the Orders of this Commission. This authorization shall remain in force and effect until superseded, suspended, cancelled or revoked by Order of this Commission.

Order Number	Date Issued	Docket Number	Filing Type
*	*	20170155-WU	Grandfather Certificate

\*Order Number and date to be provided at time of issuance

**Seminole Waterworks, Inc.  
Monthly Water Rates**

**Residential Service**

Base Facility Charge by Meter Size

5/8" x 3/4"	\$21.99
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Charge Per 1,000 gallons

0-5,000 gallons	\$2.76
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5,001- 20,000 gallons	\$3.06
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Over 20,000 gallons	\$3.40
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**Miscellaneous Service Charges**

	Business Hours	After Hours
Initial Connection Charge	\$31.10	\$36.20
Normal Reconnection Charge	\$57.10	\$64.70
Violation Reconnection Charge	\$57.10	\$64.70
Premises Visit Charge (in lieu of disconnection)	\$31.10	\$36.20
Late Payment Charge		\$6.50
NSF Check Charge	Pursuant to Section 68.065, F.S.	
Convenience Charge		\$2.60

**Initial Customer Deposits**

	Residential Service	General Service
5/8" x 3/4"	\$69.14	2x average estimated bill
All over 5/8" x 3/4"	2x average estimated bill	2x average estimated bill



# Item 15

State of Florida



## Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD  
TALLAHASSEE, FLORIDA 32399-0850

**-M-E-M-O-R-A-N-D-U-M-**

**DATE:** May 23, 2018

**TO:** Office of Commission Clerk (Stauffer)

**FROM:** Division of Engineering (Knoblauch, Graves) <sup>EK</sup> <sup>PH</sup> <sup>TV</sup> <sup>BS</sup> <sup>TR</sup>  
Division of Accounting and Finance (Fletcher, Frank, Norris)  
Division of Economics (Hudson, Sibley) <sup>MS</sup> <sup>AT</sup> <sup>IR</sup>  
Office of the General Counsel (DuVal) <sup>MAX</sup> <sup>SC</sup> <sup>DF</sup> <sup>ALM</sup>

**RE:** Docket No. 20170173-SU – Application for authority to transfer Certificate No. 538-S in Okeechobee County from Zachary Taylor Camping & Lodge, Inc. to Coastal Income Properties - Zachary Taylor LLC.

**AGENDA:** 06/05/18 – Regular Agenda – Proposed Agency Action for Issue 2 – Interested Persons May Participate

**COMMISSIONERS ASSIGNED:** All Commissioners

**PREHEARING OFFICER:** Polmann

**CRITICAL DATES:** None

**SPECIAL INSTRUCTIONS:** None

### Case Background

On August 8, 2017, Coastal Income Properties - Zachary Taylor LLC (Coastal Income, Applicant, or Buyer) filed an application for the transfer of Certificate No. 538-S. The transfer is from Zachary Taylor Camping & Lodge, Inc. (Zachary Taylor, Utility, or Seller) to Coastal Income in Okeechobee County. According to the 2016 Annual Report, Coastal Income serves 164 wastewater customers and reported a total gross revenue of \$48,940, which designates it as a Class C utility.

On May 13, 2004, the Okeechobee County Board of County Commissioners adopted Resolution No. 2004-16 declaring the water and wastewater utilities in that county subject to the provisions

of Chapter 367, Florida Statutes (F.S.).<sup>1</sup> The resolution was acknowledged by the Florida Public Service Commission (Commission) effective May 13, 2004, and the Utility filed an application for a grandfather certificate on July 28, 2004. The Utility was granted Certificate No. 538-S, and the rates and charges for utility service were approved in 2006.<sup>2</sup>

On September 30, 2014, an application to transfer Certificate No. 538-S from Zachary Taylor to Taylor Arcade, Inc. d/b/a Zachary Taylor RV Resort (Taylor Arcade) was filed with the Commission. During staff's review of the transfer, in Docket No. 20140188-SU, staff discovered that Taylor Arcade entered into an agreement to transfer Certificate No. 538-S to Coastal Income in March of 2016. On February 10, 2017, Taylor Arcade requested to withdraw its application and that docket was closed.

This recommendation addresses the transfer of the wastewater system and the net book value of the wastewater system at the time of transfer. The Commission has jurisdiction pursuant to Section 367.071, F.S.

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<sup>1</sup>Order No. PSC-04-0593-FOF-WS, issued June 15, 2004, in Docket No. 20040469-WS, *In re: Resolution of the Board of County Commissioners of Okeechobee County declaring Okeechobee County subject to the provisions of Chapter 367, F.S.*

<sup>2</sup>Order No. PSC-06-0666-PAA-SU, issued August 7, 2006, in Docket No. 20040793-SU, *In re: Application for grandfather certificate to operate wastewater utility in Okeechobee County by Zachary Taylor Camping and Lodge, Inc.*



## Discussion of Issues

**Issue 1:** Should the transfer of the wastewater system and Certificate No. 538-S in Okeechobee County from Zachary Taylor Camping & Lodge, Inc. to Coastal Income Properties - Zachary Taylor LLC be approved?

**Recommendation:** Yes. The transfer of the wastewater system and Certificate No. 538-S is in the public interest and should be approved effective the date of the Commission vote. The resultant order should serve as the Buyer's certificate and should be retained by the Buyer. The existing rates should remain in effect until a change is authorized by the Commission in a subsequent proceeding. The tariffs reflecting the transfer should be effective for service rendered on or after the stamped approval date on the tariffs pursuant to Rule 25-30.475, Florida Administrative Code (F.A.C.). Coastal Income will be responsible for paying 2018 regulatory assessment fees (RAFs) and all future RAFs. The Buyer should be responsible for filing the 2017 Annual Report and all future annual reports. (Knoblauch, Frank, Sibley)

**Staff Analysis:** On August 8, 2017, Coastal Income filed an application for the transfer of Certificate No. 538-S pursuant to Rule 25-30.037, F.A.C. The application is in compliance with Section 367.071, F.S., and Commission rules concerning applications for transfer of certificates. The sale occurred on March 4, 2016, contingent upon Commission approval, pursuant to Section 367.071(1), F.S.

### Noticing, Territory, and Land Ownership

The application contains proof of compliance with the noticing provisions set forth in Section 367.071, F.S., and Rule 25-30.030, F.A.C. No objections to the transfer were filed, and the time for doing so has expired. The application contains a description of the Utility's wastewater service territory, which is appended to this recommendation as Attachment A.

### Purchase Agreement and Financing

Pursuant to Rule 25-30.037(2)(i), and (j), F.A.C., the application contains a statement regarding financing and a copy of the purchase agreement, which includes the purchase price, terms of payment, and a list of the assets purchased. There are no customer deposits, guaranteed revenue contracts, developer agreements, customer advances, leases, or debt of Zachary Taylor that must be disposed of with regard to the transfer. According to the purchase agreement, the total purchase price of the assets includes an RV park and does not separately identify the purchase price for the Utility. However, the Buyer has allocated \$43,928 as the Utility portion of the sale. According to the Buyer, the sale took place on March 4, 2016, subject to Commission approval, pursuant to Section 367.071(1), F.S.

### Facility Description and Compliance

The wastewater system consists of a 44,880 gallon per day extended air treatment system with disposal to three percolation ponds. The permitted capacity for the treatment plant is 40,500 gallons per day. The last Florida Department of Environmental Protection (DEP) compliance inspection report was conducted on February 28, 2018, and the system was determined to be in-compliance. The system is not currently subject to any outstanding violations or consent orders; therefore, the system appears to be in-compliance with DEP requirements.



### **Technical and Financial Ability**

Pursuant to Rule 25-30.037(2)(l) and (m), F.A.C., the application contains statements describing the technical and financial ability of the applicant to provide service to the proposed service area. As referenced in the transfer application the President of Coastal Income is experienced in the operation of RV and mobile home parks. Additionally, Coastal Income has represented that it will retain the currently licensed wastewater facility operator.

Staff also reviewed the personal financial statements of the Buyer. Based on the above, the Buyer has demonstrated the technical and financial ability to provide service to the existing service territory.

### **Rates and Charges**

The Utility's rates were last approved during the Utility's application for a grandfather certificate in 2004.<sup>3</sup> Since 2004, the Utility has only requested two price indexes. Currently the Utility does not have any miscellaneous service charges. The Utility is built out and has no approved service availability charges. The Utility's existing rates are shown on Schedule No. 1. Rule 25-9.044(1), F.A.C., provides that, in the case of a change of ownership or control of a utility, the rates, classifications, and regulations of the former owner must continue unless authorized to change by the Commission. Therefore, staff recommends that the Utility's existing rates remain in effect until a change is authorized by the Commission in a subsequent proceeding.

### **Regulatory Assessment Fees and Annual Reports**

Staff has verified that the Seller is current with respect to annual reports through December 31, 2016. The Buyer has an extension to file the 2017 Annual Report by May 31, 2018. Staff has also verified that RAFs have been paid through December 31, 2017. The Buyer will be responsible for filing annual reports and paying RAFs for 2018 and all future years.

### **Conclusion**

Based on the foregoing, staff recommends that the transfer of the wastewater system and Certificate No. 538-S is in the public interest and should be approved effective the date of the Commission vote. The resultant order should serve as the Buyer's certificate and should be retained by the Buyer. The existing rates should remain in effect until a change is authorized by the Commission in a subsequent proceeding. The tariffs reflecting the transfer should be effective for service rendered on or after the stamped approval date on the tariffs pursuant to Rule 25-30.475, F.A.C. Coastal Income will be responsible for paying 2018 regulatory assessment fees (RAFs) and all future RAFs. The Buyer should be responsible for filing the 2017 Annual Report and all future annual reports.

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<sup>3</sup>Order No. PSC-06-0666-PAA-SU, issued August 7, 2006, in Docket No. 20040793-SU, *In Re: Application for grandfather certificate to operate wastewater utility in Okeechobee County by Zachary Taylor Camping and Lodge, Inc.*



**Issue 2:** What is the appropriate net book value of the wastewater system for transfer purposes and should an acquisition adjustment be approved?

**Recommendation:** The net book value of the wastewater system for transfer purposes is \$13,282 as of March 4, 2016. An acquisition adjustment should not be included in rate base. Within 90 days of the date of the final order, Coastal Income should notify the Commission in writing that it has adjusted its books in accordance with the Commission's decision. The adjustments should be reflected in Coastal Income's 2017 Annual Report when filed. (Frank)

**Staff Analysis:** Rate base has not previously been established for the Utility. The purpose of establishing net book value (NBV) for transfers is to determine whether an acquisition adjustment should be approved. The NBV does not include normal ratemaking adjustments for used and useful plant or working capital. The Utility's NBV has been updated to reflect balances as of March 4, 2016. Staff's recommended NBV, as described below, is shown on Schedule No. 1.

#### **Utility Plant in Service (UPIS)**

In the previous transfer docket related to this Utility, staff auditors requested general ledgers, invoices for capital additions, depreciation schedules, tax returns, a schedule of assets transferred, and a revenue schedule for Utility operations since the transfer to the Buyer. However, the Buyer explained he was unable to locate the requested records. As a result, audit staff referred to the Utility's 2012 Annual Report to establish the Utility's NBV. As of the filing of this current docket, the Buyer is still unable to locate the necessary records. Staff notes that there have been no additions to plant since 2012. Therefore, staff has referred to the Utility's 2016 Annual Report for the purpose of establishing the Utility's NBV. The Utility's 2016 Annual Report reflected a UPIS balance of \$49,538. Therefore, staff recommends that the Utility's UPIS balance as of March 4, 2016, should be \$49,538.

#### **Land**

The Utility's 2016 Annual Report reflected a land balance of \$34,375. In the previous transfer for this Utility, audit staff toured the wastewater plant facility and reviewed Okeechobee County Property Appraiser documents to determine how much of the 10.562 acres is used by the wastewater utility system. Based on audit staff's review, approximately 14,520 square feet, or 1/3 of an acre, of land is estimated to be occupied by the wastewater plant site. This equates to a land value of \$4,450 (\$13,350 x 1/3 of an acre). Therefore, staff recommends a balance for land of \$4,450, as of March 4, 2016.

#### **Accumulated Depreciation**

The Utility's 2016 Annual Report reflected an accumulated depreciation balance of \$41,394 as of December 31, 2015. Staff recalculated accumulated depreciation of plant since 2012 to reflect accumulated depreciation as of March 4, 2016. Staff calculated the appropriate accumulated depreciation balance to be \$40,706. As a result, accumulated depreciation should be decreased by \$688 to reflect an accumulated depreciation balance of \$40,706, as of March 4, 2016.

### **Net Book Value**

The Utility's 2016 Annual Report reflected a NBV of \$42,519. Based on the adjustments described above, staff recommends a NBV of \$13,282, as of March 4, 2016. Staff's recommended NBV and the National Association of Regulatory Utility Commissioners, Uniform System of Accounts (NARUC USOA) balances for UPIS and accumulated depreciation as of March 4, 2016, are shown on Schedule No. 2.

### **Acquisition Adjustment**

An acquisition adjustment results when the purchase price differs from the NBV of the assets at the time of the acquisition. The Utility and its assets were purchased for \$43,928. As stated above, staff has determined the appropriate NBV total to be \$13,282. Pursuant to Rule 25-30.0371, F.A.C., a positive acquisition adjustment may be appropriate when the purchase price is greater than the NBV, and a negative acquisition adjustment may be appropriate when the purchase price is less than NBV. However, pursuant to Rule 25-30.0371(2), F.A.C., a positive acquisition adjustment shall not be included in rate base unless there is proof of extraordinary circumstances. The Buyer did not request a positive acquisition adjustment. As such, staff recommends that no positive acquisition adjustment be approved.

### **Conclusion**

Based on the above, staff recommends that the NBV of the Utility for transfer purposes is \$13,282 as of March 4, 2016. No acquisition adjustment should be included in rate base. Within 90 days of the date of the final order, the Buyer should notify the Commission, in writing, that it has adjusted its books in accordance with the Commission's decision. The adjustments should be reflected in Coastal Income's 2017 Annual Report when filed.



**Issue 3:** Should this docket be closed?

**Recommendation:** If no protest to the proposed agency action is filed by a substantially affected person within 21 days of the date of the issuance of the order, a consummating order should be issued and the docket should be closed administratively upon Commission staff's verification that the revised tariff sheets have been filed and the Buyer has notified the Commission in writing that it has adjusted its books in accordance with the Commission's decision. (DuVal)

**Staff Analysis:** If no protest to the proposed agency action is filed by a substantially affected person within 21 days of the date of the issuance of the order, a consummating order should be issued and the docket should be closed administratively upon Commission staff's verification that the revised tariff sheets have been filed and the Buyer has notified the Commission in writing that it has adjusted its books in accordance with the Commission's decision.



**Coastal Income Properties - Zachary Taylor LLC  
Okeechobee County  
Description of Wastewater Territory**

**Parcel 1 - Zachary Taylor Camping and Lodge**

Township 37 South, Range 35 East  
Section 35

Begin at the Northeast corner of Section 35, Township 37 South, Range 35 East. Thence West along the North line of said Section a distance of 520 feet to the Point of Beginning (POB). Thence continue West along the North line a distance of 420 feet to the East edge of Taylor Creek. Thence along the waters edge of Taylor Creek the following 5 courses to a Bridge used to cross State Road 15 (Conners Highway).

1. South 28° West a distance of 80 feet.
2. South 8° 30' West a distance of 270 feet.
3. South 2° West a distance of 280 feet
4. South 5° East a distance of 240 feet.
5. South 18° East a distance of 730 feet.

Thence North 75° East a distance of 200 feet along the North Right of Way line of State Road 15 (Conners Highway). Thence North 9° West a distance of 300 feet. Thence North 78° East a distance of 101 feet. Thence North 8° West a distance of 60 feet. Thence North 90° West a distance of 1,120 feet to the POB.

**Parcel 2 - The Taylor Creek Condominium Association**

Township 37 South, Range 35 East  
Section 35

Begin at the Northeast corner of Section 35, Township 37 South, Range 35 East. Thence South along the East line of said section a distance of 1,770 feet to the Point of Beginning (POB). Thence South 89° West a distance of 150 feet. Thence North 0° West a distance of 100 feet. Thence South 82° West a distance of 280 feet along the South Right of Way line of State Road 15. Thence South 0° West a distance of 20 feet. Thence South 81° West a distance of 165 feet. Thence South 15° East a distance of 700 feet. Thence North 75° East a distance of 420 feet. Thence North along the East line of said section a distance of 550 feet to the POB

**FLORIDA PUBLIC SERVICE COMMISSION**

**Authorizes  
Coastal Income Properties - Zachary Taylor LLC  
Pursuant to  
Certificate Number 538-S**

To provide water service in Okeechobee County in accordance with the provisions of Chapter 367, Florida Statutes, and the Rule, regulations, and Orders of this Commission in the territory described by the Orders of this Commission. This authorization shall remain in force and effect until superseded, suspended, cancelled or revoked by Order of this Commission.

<u>Order Number</u>	<u>Date Issued</u>	<u>Docket Number</u>	<u>Filing Type</u>
PSC-06-0666-PAA-SU	08/07/2006	040793-SU	Original Certificate
*	*	20170173-SU	Transfer of Certificate

**\* Order Numbers and dates to be provided at time of issuance**

**Zachary Taylor Camping and Lodge, Inc.**  
**Monthly Wastewater Rates**

**Residential Service**

Flat rate	\$ 24.28
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**General Service**

Flat Rate – Zachary Taylor RV Park (88 ERCS)	\$ 2,135.90
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**Zachary Taylor Camping & Lodge, Inc. Wastewater System Schedule**  
**Wastewater System**  
**Schedule of Net Book Value as of March 4, 2016**

<b>Description</b>	<b>Balance Per Utility</b>	<b>Adjustments</b>	<b>Staff Recommended</b>
Utility Plant in Service	\$49,538	\$0	\$49,538
Land & Land Rights	34,375	(29,925) A	4,450
Accumulated Depreciation	(41,394)	688 B	(40,706)
CIAC	0	(0)	0
Amortization of CIAC	<u>0</u>	<u>0</u>	<u>0</u>
Total	<u>\$42,519</u>	<u>(\$29,237)</u>	<u>\$13,282</u>



**Explanation of Staff's Recommended  
Adjustments to Net Book Value as of March 4, 2016  
Wastewater System**

<b>Explanation</b>	<b>Amount</b>
A. Land and Land Rights To reflect appropriate amount of land.	<u>(\$29,925)</u>
B. Accumulated Depreciation To reflect appropriate amount of accumulated depreciation.	<u>\$688</u>
Total Adjustments to Net Book Value as of March 4, 2016.	<u>(\$29,237)</u>

**Zachary Taylor Camping & Lodge, Inc.**  
**Wastewater System**  
**Schedule of Staff Recommended Account Balances as of March 4, 2016**

<b>Account</b>			<b>Accumulated</b>
<b>No.</b>	<b>Description</b>	<b>UPIS</b>	<b>Depreciation</b>
361	Collection Sewers - Gravity	\$41,822	(\$37,701)
370	Receiving Wells	5,635	(1,985)
371	Pumping Equipment	906	(418)
389	Miscellaneous Equipment	<u>1,175</u>	<u>(602)</u>
	Total	<u>\$49,538</u>	<u>(\$40,706)</u>

# Item 16

State of Florida



FILED 5/23/2018  
DOCUMENT NO. 03857-2018  
FPSC - COMMISSION CLERK

## Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD  
TALLAHASSEE, FLORIDA 32399-0850

**-M-E-M-O-R-A-N-D-U-M-**

**DATE:** May 23, 2018

**TO:** Office of Commission Clerk (Stauffer)

**FROM:** Division of Engineering (M. Watts) *Watts*  
Division of Accounting and Finance (Fletcher, Johnson, Norris) *ALM*  
Division of Economics (Bruce) *Bruce*  
Office of the General Counsel (Trierweiler) *Trierweiler*

**RE:** Docket No. 20170178-WS – Application for original certificates of authorization for existing utility currently charging for water and wastewater service in Polk County, by Coastal Income Properties - The Harbor, LLC d/b/a The Harbor.

**AGENDA:** 06/05/18 – Regular Agenda – Proposed Agency Action for Issue 2 – Interested Persons May Participate

**COMMISSIONERS ASSIGNED:** All Commissioners

**PREHEARING OFFICER:** Polmann

**CRITICAL DATES:** 06/05/18 (Statutory deadline for original certificate pursuant to Section 367.031, Florida Statutes, waived by applicant until this date.)

**SPECIAL INSTRUCTIONS:** None

### Case Background

Coastal Income Properties - The Harbor, LLC (Coastal Income or Utility) is located in Polk County. Based on its application, the Utility provides water service to 175 individual mobile home/recreational vehicle (RV) customers, and 1 general service customer. The general service customer (Hidden Harbor Resort) has 14 lots. Coastal Income also provides wastewater service to 156 of the residential water service customers.



The water and wastewater systems were built in 1967 to service the original RV resort (Harbor Waterfront Resort or Resort), owned and developed by Harry and Lucille Monroe, consisting of 119 lots for RVs and mobile homes. In subsequent years, the Monroes developed the surrounding area into what is now known as Mark Lane, Opal Drive, and Harbor Pointe Drive. These areas are outside of the Resort and the mobile homes are individually owned. The Monroes extended water service to these areas, and wastewater service to all but the residents of Opal Drive and two of the residents on Mark Lane. The Monroes also extended water service to a mobile home park adjacent to Opal Drive, the Hidden Harbor Resort (Hidden Harbor). In 1994, the Monroes sold the resort and all of its facilities to Mr. Rob Smith.

Until 1996, regulation of water and wastewater utilities in Polk County (County) fell under the jurisdiction of the County. On May 14, 1996, the Board of County Commissioners of Polk County adopted a resolution<sup>1</sup> which made the privately-owned, for-profit water and wastewater utilities in the County subject to the jurisdiction of the Florida Public Service Commission (Commission). The owner of the subject water and wastewater systems, Mr. Smith, was informed at that time that his water and wastewater systems would be exempt from Commission regulation and he would not have to file a grandfather application.

On June 28, 2016, the Office of Public Counsel (OPC) contacted staff regarding the regulatory status of the Resort because it received a complaint from a water and wastewater customer of the Resort. The complaint was handled by the Polk County Health Department, and Commission staff began investigating whether the Resort was exempt from Commission regulation or needed a certificate. On July 27, 2016, staff sent the Resort a letter instructing it to file an application for water and wastewater certificates by August 31, 2016.

On August 23, 2016, the Resort requested an extension to November 30, 2016, which was granted. Staff worked with an engineering firm retained by the Resort to prepare maps and territory descriptions that met the requirements of the Commission's rules. On June 12, 2017, staff was informed that the Resort had been sold, including the water and wastewater systems, to Coastal Income, managed by Mr. Brian Keller. The closing took place on June 15, 2017.

Following the sale, staff worked with Coastal Income to complete its application for water and wastewater certificates. The Utility filed its application on August 21, 2017. Staff found its application to be deficient, and issued a deficiency letter on September 20, 2017. The Utility cured the deficiencies on February 20, 2018.

Pursuant to Section 367.031, Florida Statutes (F.S.), the Commission shall grant or deny an application for a certificate of authorization within 90 days after the official filing date of the completed application. The application was deemed complete on February 20, 2018, which is considered the official filing date. Coastal Income has waived the 90-day statutory deadline through June 5, 2018.

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<sup>1</sup>Order No. PSC-96-0896-FOF-WS, issued July 11, 1996, in Docket No. 960674-WS, *In re: Resolution of Board of Commissioners of Polk County declaring Polk County subject to provisions of Chapter 367, F.S.*

Docket No. 20170178-WS

Date: May 23, 2018

This recommendation addresses the application for original water and wastewater certificates and the appropriate rates and charges for the Utility. The Commission has jurisdiction pursuant to Sections 367.031 and 367.045, F.S.



## Discussion of Issues

**Issue 1:** Should the application for water and wastewater certificates by Coastal Income be approved?

**Recommendation:** Yes. Coastal Income should be granted Certificate Nos. 671-W and 573-S to serve the territory described in Attachment A, effective the date of the Commission's vote. The resultant order should serve as Coastal Income's water and wastewater certificates and it should be retained by the Utility. (M. Watts, Johnson)

**Staff Analysis:** On August 21, 2017, Coastal Income filed its application for original water and wastewater certificates in Polk County. Upon review, staff determined the original filing was deficient and sent several data requests to the Utility seeking additional information. Coastal Income corrected the deficiencies on February 20, 2018, which is considered the official filing date for the application. The Utility's application is in compliance with the governing statutes, Sections 367.031 and 367.045, F.S.

### Notice

On February 20, 2018, Coastal Income filed proof of compliance with the noticing provisions set forth in Rule 25-30.030, Florida Administrative Code (F.A.C.). No entity filed a protest during the protest period and the time for filing objections has expired.

### Land Ownership and Service Territory

Coastal Income provided adequate service territory and system maps and a territory description as required by Rule 25-30.034, F.A.C. The legal description of the service territory is appended to this recommendation as Attachment A. The application contains a copy of a special warranty deed that was executed on June 15, 2017, as evidence that the Utility owns the land upon which the wastewater treatment facilities are located pursuant to Rule 25-30.037(2)(s), F.A.C.

### Financial and Technical Ability

Pursuant to Rule 25-30.034(1)(i), F.A.C., the Utility provided statements describing its financial and technical ability to provide service. Staff has reviewed the financial statements of Coastal Income and believes the current owner has documented adequate resources to support the Utility's water and wastewater operations.

Regarding technical ability, the Utility stated in its application that, during the mid-1980's and early 1990's, Mr. Keller owned and operated 36 mobile home and RV communities throughout the State of Florida. Approximately half of the communities had their own wells and wastewater treatment facilities. He has sufficient experience administratively and operationally to operate Coastal Income facilities. In addition, the technical expertise and daily operating procedures will be handled by a contractor licensed by the Florida Department of Environmental Protection (DEP). As of May 9, 2018, Coastal Income has no compliance issues on file with DEP and is current with its monitoring requirements.

**Conclusion**

Coastal Income should be granted Certificate Nos. 671-W and 573-S to serve the territory described in Attachment A, effective the date of the Commission's vote. The resultant order should serve as Coastal Income's water and wastewater certificates and it should be retained by the Utility.



**Issue 2:** What are the appropriate rates and charges for Coastal Income?

**Recommendation:** Staff recommends that the Utility be authorized to charge residential and general service flat rates of \$42 per month for water and \$42 per month for wastewater for all customers, with the exception of Hidden Harbor, which should be charged \$315 per month as shown on Schedule No. 1. The Utility's proposed late payment charge of \$5 should also be approved. The Utility should be authorized to bill all customers on a quarterly basis. The Utility should be required to notice all customers of the approved rates and charges and the change to quarterly billing. The notice should be approved by staff prior to publication and the Utility should provide proof of the date notice was given within 10 days of the date of the notice. The approved rates and charges should be effective for service rendered on or after the effective date of the tariffs pursuant to Rule 25-30.475, F.A.C. (Bruce)

**Staff Analysis:** The Utility provides water service to approximately 175 residential customers and Hidden Harbor; wastewater service is provided to approximately 156 of the residential customers. Because the Utility's customers are not metered, they are billed flat rates for water and wastewater service. For customers in a portion of the service area, the cost of water and wastewater service is included in the lot rent. In addition, the flat rate for some customers has included non-jurisdictional services, such as garbage and street lights and some customers were billed an additional amount if the customers had a washing machine.

The Utility proposes billing all residential and general service customers, with the exception of Hidden Harbor, flat rates of \$42 per month for water and \$42 per month for wastewater based on the amounts currently billed to water and wastewater customers who are not billed for the non-jurisdictional services. Hidden Harbor will continue to be charged \$315 per month for water service.

The Utility has also previously billed a late payment charge of \$10 per month; however, the Utility proposed a \$5 late payment charge and provided cost justification which reflects the Utility's administrative cost for processing late payment notices. The proposed late payment charge is consistent with prior Commission decisions.<sup>2</sup> The Utility's cost justification for its requested late payment charge is shown below on Table 2-1. The Utility does not have any other miscellaneous service charges or service availability charges.

Prior to Commission regulation, the Utility increased monthly water and wastewater rates annually, effective January 1. However, due to the Utility's pending application, the Utility was not allowed to increase its rates for January 1, 2018, without Commission approval.

The Utility has previously allowed customers to choose whether they wanted to pay monthly, quarterly, semi-annually, or annually. However, the Utility proposes billing all customers on a quarterly basis. The Utility is responsible for contacting the Department of Business and Professional Regulation to amend their prospectus to remove the cost of water and wastewater service from lot rent.

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<sup>2</sup>Order No. PSC-15-0535-PAA-WU, issued November 19, 2015, in Docket No. 20140217-WU, *In re: Application for staff assisted rate case in Sumter County by Cedar Acres, Inc.*

**Table 2-1**  
**Late Payment Charge**

Labor	\$4.28
Supplies	\$0.23
Postage	\$0.49
Total	\$5.00

Source: Utility's Cost Justification

Staff recommends that the Utility be authorized to charge residential and general service flat rates of \$42 per month for water and \$42 per month for wastewater for all customers, with the exception of Hidden Harbor, which should be charged \$315 per month as shown on Schedule No. 1. The Utility's proposed late payment charge of \$5 should also be approved. The Utility should be authorized to bill all customers on a quarterly basis. The Utility should be required to notice all customers of the approved rates and charges and the change to quarterly billing. The notice should be approved by staff prior to publication and the Utility should provide proof of the date notice was given within 10 days of the date of the notice. The approved rates and charges should be effective for service rendered on or after the effective date of the tariffs pursuant to Rule 25-30.475, F.A.C.



**Issue 3:** Should this docket be closed?

**Recommendation:** No. If no person whose substantial interests are affected by the proposed agency action files a protest within 21 days of the issuance of the order, a consummating order should be issued. The docket should remain open for staff's verification that the revised tariff sheets and customer notice have been filed by the utility and approved by staff. Once these actions are complete, this docket should be closed administratively. (Trierweiler)

**Staff Analysis:** If no person whose substantial interests are affected by the proposed agency action files a protest within 21 days of the issuance of the order, a consummating order should be issued. The docket should remain open for staff's verification that the revised tariff sheets and customer notice have been filed by the utility and approved by staff. Once these actions are complete, this docket should be closed administratively.

**Coastal Income Properties - The Harbor, LLC**  
**Description of Water and Wastewater Service Territory**

**Polk County**

Commence at the Southwest corner of Section 21, also being the Northwest corner of Section 28, Township 29 South, Range 29 East, Polk County, Florida. Thence run N90°00'00"E along the Common line between said Sections 21 and 28 a distance of 2,543.93 ' to the SE Corner of Lot 1 Block G of Tiotie Beach Estates, Unit Number Two as recorded in Plat Book 41, Page 17, Public Records of Polk County, Florida, and the Point of Beginning. Thence run along the Easterly Boundary of said Block G the following three courses N00°08'15"E 24.46'; N55°11'25"E 245.00'; S89°51'45"E 42.00'; thence continue along the Easterly Boundary of Block G, N00°08'15"E 131.99' to the NE corner Lot 6 of said Block G and the South Right of Way of North Marina Parkway and Kissimmee Boulevard, thence S89°51'45"E, along said South Right of Way, 547.25'; thence N00°08'15"E, 200.00' to the NE corner of Lot 18, Block C, of said Tiotie Beach Estates, Unit Number Two; thence S89°51'45"E, along the South Right of Way of a 50.00' Canal, 485.00' to Lake Rosalie; thence S05°12'45"W, along Lake Rosalie, 1,050.20'; thence N89°51'45"W, 1,385.90' to the East line of Tiotie Beach Estates, Unit Number Three, as Recorded in Plat Book 41, Page 20, Public Records of Polk County, Florida; thence along said East line N00°00'00"E, 124.00'; thence N04°52'17"W, 118.25'; thence N35°00'00"E, 375.00' to the NE corner of said Tiotie Beach Estates, Unit Number Three, returning to the Point of Beginning.



**FLORIDA PUBLIC SERVICE COMMISSION**

**authorizes**

**Coastal Income Properties - The Harbor, LLC**  
**pursuant to**  
**Certificate Number 671-W**

to provide water service in Polk County in accordance with the provisions of Chapter 367, Florida Statutes, and the Rule, regulations, and Orders of this Commission in the territory described by the Orders of this Commission. This authorization shall remain in force and effect until superseded, suspended, cancelled or revoked by Order of this Commission.

<u>Order Number</u>	<u>Date Issued</u>	<u>Docket Number</u>	<u>Filing Type</u>
*	*	20170178-WS	Original Certificate

\* Order Number and date to be provided at time of issuance.

**FLORIDA PUBLIC SERVICE COMMISSION**

**authorizes**

**Coastal Income Properties - The Harbor, LLC  
pursuant to  
Certificate Number 573-S**

to provide wastewater service in Polk County in accordance with the provisions of Chapter 367, Florida Statutes, and the Rule, regulations, and Orders of this Commission in the territory described by the Orders of this Commission. This authorization shall remain in force and effect until superseded, suspended, cancelled or revoked by Order of this Commission.

<u>Order Number</u>	<u>Date Issued</u>	<u>Docket Number</u>	<u>Filing Type</u>
*	*	20170178-WS	Original Certificate

\* Order Number and date to be provided at time of issuance.

**The Harbor Waterfront Resort  
Monthly Water Rates**

**Residential and General Service**

Flat Rate	\$42.00
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**General Service**

Flat Rate - Hidden Harbor Resort (7.5 ERCs)	\$315.00
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**Monthly Wastewater Rates**

**Residential and General Service**

Flat Rate	\$42.00
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**Miscellaneous Service Charges**

Late Payment Charge	\$5.00
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# Item 17



State of Florida



## Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD  
TALLAHASSEE, FLORIDA 32399-0850

**-M-E-M-O-R-A-N-D-U-M-**

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**DATE:** May 23, 2018

**TO:** Office of Commission Clerk (Stauffer)

**FROM:** Division of Economics (Doherty) *RD ELD PA*  
Office of the General Counsel (Mapp) *JSO*

**RE:** Docket No. 20180086-EI – Petition for approval of revised underground residential distribution tariffs, by Tampa Electric Company.

**AGENDA:** 06/05/18 – Regular Agenda – Tariff Filing – Interested Persons May Participate

**COMMISSIONERS ASSIGNED:** All Commissioners

**PREHEARING OFFICER:** Administrative

**CRITICAL DATES:** 06/12/18 (60-Day Suspension Date)

**SPECIAL INSTRUCTIONS:** None

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### Case Background

On April 2, 2018, Tampa Electric Company (TECO or utility) filed a petition for approval of its revised underground residential distribution (URD) tariffs. The proposed tariffs and associated charges are shown in legislative format in Attachment A of the recommendation. TECO's current URD tariffs were approved in Order No. PSC-2017-0293-TRF-EI.<sup>1</sup>

Rule 25-6.078, Florida Administrative Code (F.A.C.), defines investor-owned utilities' (IOU) responsibilities for filing updated URD tariffs. TECO has filed the instant petition pursuant to subsection (3) of the rule, which requires IOUs to seek Commission approval of updated URD tariff charges if the utility's per-lot cost differentials between overhead and underground service based on current material and labor costs vary by more than 10 percent from the existing

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<sup>1</sup>Order No PSC-2017-0293-TRF-EI, issued August 1, 2017, in Docket NO. 20170073-EI, *In re: Petition for approval of revised residential distribution tariffs, by Tampa Electric Company.*

Commission-approved differentials. All IOUs are required to file supporting data and analyses for URD tariffs at least once every three years.

The URD tariffs provide standard charges for underground service in new residential subdivisions and represent the additional costs, if any, the utility incurs to provide underground service in place of overhead service. The cost of standard overhead construction is recovered through base rates from all ratepayers. In lieu of overhead construction, customers have the option of requesting underground facilities. Typically, the URD customer is the developer of the subdivision.

Staff issued one data request and in its response TECO provided certain corrections to the cost support. The Commission has jurisdiction over this matter pursuant to Sections 366.03, 366.04, 366.05, and 366.06, Florida Statutes.

## Discussion of Issues

**Issue 1:** Should the Commission approve TECO's proposed URD tariffs and associated charges?

**Recommendation:** Yes, the Commission should approve TECO's proposed URD tariffs and associated charges as shown in Attachment A, effective June 5, 2018. (Doherty)

**Staff Analysis:** TECO's URD charges are based on two standard model subdivisions: (1) a 210-lot low density (LD) subdivision, and (2) a 176-lot high density (HD) subdivision. While actual construction may differ from the model subdivisions, the model subdivisions are designed to reflect average overhead and underground subdivisions.

Costs for underground construction have historically been higher than for standard overhead construction and the additional cost is paid by the customer as a contribution-in-aid-of-construction (CIAC). However, as shown on proposed tariff sheet No. 5.510, TECO's proposed URD differential charges are \$0 for both model subdivisions. Therefore, the URD customer will not be assessed a CIAC charge for underground service in a new residential subdivision.

Table 1-1 presents a comparison between the currently approved and proposed URD differentials for the LD and HD subdivision. The charges shown are per-lot charges.

**Table 1-1**  
**Comparison of URD Differential per Lot**

	<b>Current Differential</b>	<b>Proposed Differential</b>
Low Density	\$247.69	\$0.00 <sup>2</sup>
High Density	\$0.00	\$0.00

Source: Petition page 2; paragraphs 6 and 7

As shown in Table 1-1 above, the proposed differential for the LD subdivision decreases to \$0 per lot and the proposed differential for the HD subdivision remains at \$0. The decrease in the LD differential is primarily attributable to the overhead operational costs increasing at a higher rate than the underground operational costs. The calculations of the proposed URD charges include updated labor and material costs and updated operational costs. The costs are discussed below.

### Updated Labor and Material Cost

The installation costs of underground and overhead facilities include the labor and material costs to provide primary, secondary, and service distribution lines as well as transformers. The costs of poles are specific to overhead service while the costs of trenching and backfilling are specific to underground service. TECO's current URD charges are based on 2016 labor and material costs and the proposed charges are based on 2017 costs. Table 1-2 compares the per-lot 2016 and 2017

<sup>2</sup> The calculation is as follows: \$793 (rounded Table 1-2) - \$1,284 (Table 1-3) = -\$491; the proposed URD differential per lot is \$0 as the URD differential can not be less than zero.



underground and overhead labor and material costs (rounded to whole dollars) for the two subdivisions.

**Table 1-2**  
**Labor and Material Costs per Lot**

	2016 Costs	2017 Costs	Difference from 2016 – 2017
<b>Low Density</b>			
Underground labor/material costs	\$2,156	\$2,082	(\$74)
Overhead labor/material costs	\$1,379	\$1,289	(\$90)
Per lot differential	\$777	\$793	\$16
<b>High Density</b>			
Underground labor/material costs	\$1,640	\$1,596	(\$44)
Overhead labor/material costs	\$1,001	\$1,001	\$0
Per lot differential	\$639	\$595	(\$44)

Source: Petition Exhibit pages LD 1 and HD 1 and revised LD 1 filed on May 4, 2018.

As indicated in Table 1-2 above, the overhead labor and material cost for the LD model subdivision decreased at a higher rate than the underground labor and material cost, resulting in a minor increase in the differential (\$16). For the HD model subdivision, underground labor and material costs decreased, while overhead labor and material cost remained the same, resulting in a decrease in the differential (\$44).

Documentation provided by TECO shows that material costs for both underground and overhead construction increased. Specifically, for the LD subdivision model, underground material cost increased by 3.63 percent and overhead material cost increased by one percent. TECO explained that the utility has seen more volatility in material costs as a result of hurricane restoration work in recent years. However, labor costs decreased by 8.55 percent for underground construction and by 12.61 percent for overhead construction resulting in the overall decrease in total labor/material costs shown in Table 1-2. TECO explained that labor costs mainly decreased because of a decrease in contract labor rates. The HD subdivision model has similar changes in material and labor costs.

### **Updated Operational Costs**

Rule 25-6.078(4), F.A.C., provides that the differences in Net Present Value (NPV) of actual operational costs between overhead and underground systems, including average historical storm restoration costs over the life of the facilities, be included in the URD charge. Operational costs include operations and maintenance (O&M) costs and capital costs. The inclusion of the operational costs is intended to capture the longer term costs and benefits of undergrounding.

TECO used its actual historical O&M and capital expenses to calculate the operational cost difference for overhead and underground facilities. Table 1-3 below compares 2016 and 2017 NPV calculations of operational cost differentials (rounded to whole dollars) between overhead and underground systems on a per-lot basis.



**Table 1-3**  
**NPV of Operational Costs Differential per Lot**

	<b>2016 Calculation</b>	<b>2017 Calculation</b>	<b>Difference</b>
<b>Low Density</b>			
Underground NPV – Operational Costs	\$1,025	\$1,247	\$222
Overhead NPV – Operational Costs	\$1,554	\$2,531	\$977
Per lot Differential	(\$529)	(\$1,284)	(\$755)
<b>High Density</b>			
Underground NPV – Operational Costs	\$484	\$590	\$106
Overhead NPV – Operational Costs	\$1,157	\$1,871	\$714
Per lot Differential	(\$673)	(\$1,281)	(\$608)

Table 1-3 shows that the NPV of operational costs for overhead service increased at a significantly higher rate than the NPV of operational costs for underground service. This has the effect of reducing the URD differentials shown on Table 1-1 to \$0. TECO explained that the inclusion of the 2017 overhead storm restoration costs as a result of Hurricane Irma contributed to the significant increase in the overhead operational costs.<sup>3</sup> The operational costs are based on the three-year average of TECO's operational costs for the years 2015 through 2017.

The methodology used by TECO in its 2017 filing for calculating the NPV of operational costs was approved in Order No. PSC-09-0784-TRF-EI.<sup>4</sup> In response to a staff data request, TECO stated that it used the same approved methodology in the instant docket. TECO's NPV calculation uses a 35-year life for the facilities and a 6.81 percent discount rate. Staff notes that operational costs may vary among IOUs as a result of differences in size of service territory, miles of coastline, regions subject to extreme winds, age of the distribution system, or construction standards.

### **Other Proposed Tariff Changes**

In addition to the proposed tariff changes discussed above, TECO proposed to revise its non-refundable deposits for estimates of CIAC for conversion of existing overhead distribution facilities to underground facilities. To develop the proposed deposits, TECO adjusted its current deposit amounts by the Consumer Price Index (CPI) of 2.1 percent.<sup>5</sup> TECO also proposed modifications to the charges and credits for customers requesting new underground service laterals from overhead distribution systems and for the conversion of existing service laterals from overhead to underground based on current material and labor costs.

<sup>3</sup> TECO provided similar comments in its slide presentation (page 16) at the workshop held on May 2-3, 2018, and in its responses to Staff's First Data Request No. 36, and to Staff's Third Data Request No. 4. in Docket No. 20170215-EU, *In re: Review of electric utility hurricane preparedness and restoration actions*.

<sup>4</sup> Order No. PSC-09-0784-TRF-EI, issued November 19, 2009, in Docket No. 090164-EI, *In re: Petition for approval of revised tariff sheets for underground residential distribution service, by Tampa Electric Company*.

<sup>5</sup> Table 24 of the CPI Detailed Report published by the United States Department of Labor Bureau of Labor Statistics.

**Conclusion**

Staff has reviewed TECO's proposed changes to its URD tariffs and associated charges, the accompanying work papers, and responses to staff's data requests. Documentation provided by TECO supports the utility's assertion that the per-lot cost differentials for the model LD and HD subdivisions is \$0. Staff believes TECO's proposed URD tariffs and associated charges are reasonable and recommends approval of the tariffs shown in Attachment A, effective June 5, 2018.

**Issue 2:** Should this docket be closed?

**Recommendation:** If Issue 1 is approved and a protest is filed within 21 days of the issuance of the order, the tariffs should remain in effect, with any revenues held subject to refund, pending resolution of the protest. If no timely protest is filed, this docket should be closed upon the issuance of a consummating order. (Mapp)

**Staff Analysis:** If Issue 1 is approved and a protest is filed within 21 days of the issuance of the order, the tariffs should remain in effect, with any revenues held subject to refund, pending resolution of the protest. If no timely protest is filed, this docket should be closed upon the issuance of a consummating order.





~~NINTH-TENTH~~ REVISED SHEET  
NO. 5.510  
CANCELS ~~EIGHTH-NINTH~~  
REVISED SHEET NO. 5.510

Continued from Sheet No. 5.500

### 3.6.5.1 Single Meter Commercial Service

Mobile Home Parks will be supplied single-meter commercial service only where park owner or operator supplies (furnishes) electrical service as a part of his rental and/or general service charge to tenants. Resale of electric energy through park owned meters will not be permitted (See 2.2.1)

### 3.6.5.2 Individual Company Metered Service

Mobile Home Parks will be supplied through company installed individual meters for individual tenants and other types of service required in park under the provisions required on 3.4.3 and 3.4.4 and the subparts appertaining thereto.

### 3.6.6 Miscellaneous Types of Electric Service

Certain other types of electric service are available from the company. Information on such services not specifically covered in this Tariff may be obtained at the nearest company office. Such special cases will be given individual consideration.

## 3.7 SCHEDULE OF STANDARD CHARGES AND NON-REFUNDABLE DEPOSITS FOR COST ESTIMATES FOR UNDERGROUND ELECTRIC DISTRIBUTION SYSTEMS

### 3.7.1 Standard Charges

The Standard Charges listed here are Contributions In Aid of Construction (CIAC) which are referenced by other sections of these rules and regulations.

#### 3.7.1.1 Residential Subdivision

Low Density Subdivisions per service lateral or dwelling unit...	<del>\$247.690.00</del>
High Density Subdivisions per service lateral or dwelling unit...	\$0.00

#### 3.7.1.2 New Single-phase UG Service Laterals from Overhead Distribution Systems

Fixed Charge for 2/0 service lateral	\$71.5536
Fixed Charge for 4/0 service lateral	<del>\$103.92106.53</del>

Per trench foot charge for 2/0 service lateral	<del>\$11.0610.02</del>
Per trench foot charge for 4/0 service lateral	<del>\$10.929.91</del>

Credit for service pole if otherwise required for overhead service	<del>\$642.53592.39</del>
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Continued to Sheet No. 5.515

ISSUED BY: ~~G. L. Gillette~~ N. G. Tower,  
President

DATE EFFECTIVE: July 13, 2017





~~FIFTEENTH-SIXTEENTH~~ REVISED  
SHEET NO. 5.515  
CANCELS ~~FOURTEENTH~~  
~~FIFTEENTH~~ REVISED SHEET NO.  
5.515

Continued from Sheet No. 5.510

### 3.7.1.3 Single-phase UG Service Laterals Converted from Existing Overhead Service Drops

Removal charge for overhead service with no service pole	<del>\$112.75</del> <u>167.70</u>
Removal charge for overhead service with a service pole	<del>\$550.19</del> <u>752.94</u>
Fixed Charge for 2/0 service lateral	\$71. <del>55</del> <u>36</u>
Fixed Charge for 4/0 service lateral	<del>\$103.92</del> <u>106.53</u>
Per trench foot charge for 2/0 service lateral	<del>\$11.06</del> <u>10.02</u>
Per trench foot charge for 4/0 service lateral	<del>\$10.92</del> <u>9.91</u>
Credit for service pole if otherwise required for overhead service	<del>\$612.53</del> <u>592.39</u>

Continued to Sheet No. 5.516

ISSUED BY: ~~G. L. Gillette~~N. G. Tower,  
President

DATE EFFECTIVE: ~~July 13, 2017~~



~~NINTH-TENTH~~ REVISED SHEET  
NO. 5.516  
CANCELS ~~EIGHTH-NINTH~~  
REVISED SHEET NO. 5.516

Continued from Sheet No. 5.515

### 3.7.2 Non-refundable Deposits for Estimates of CIAC for Conversion of Existing Overhead Distribution Facilities to Underground Facilities

Qualified applicants can request, upon payment of a non-refundable deposit as listed below, the conversion of overhead distribution facilities to underground in accordance with these Rules and Regulations for conversion areas of not less than one (1) city block in length along both sides of the main distribution system, or in the absence of city blocks, not less than five (5) contiguous building lots along both sides of the main distribution system, or in the absence of both, not the less than 600 pole-feet of the main distribution system, including all customers served along both sides of the main distribution system, and so as to result in a decrease in the number of non-lighting poles in the system.

Requests for conversions, except for individual residential service covered under Section 3.4.3.3, will be accompanied by a non-refundable amount as follows:

Density Class	Deposit Amount
Urban Commercial or Residential.....	\$9, <del>626-896</del> per mile*
Rural Commercial or Residential.....	\$5, <del>630-657</del> per mile*
High or Low Density Subdivision.....	\$ <del>46-47</del> per lot

\* As measured along the existing overhead primary and secondary distribution system.

ISSUED BY: ~~G. L. Gillette~~ N. G. Tower,  
President

DATE EFFECTIVE: July 13, 2017

# Item 18

State of Florida



## Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD  
TALLAHASSEE, FLORIDA 32399-0850

**-M-E-M-O-R-A-N-D-U-M-**

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**DATE:** May 23, 2018

**TO:** Office of Commission Clerk (Stauffer)

**FROM:** Division of Accounting and Finance (Cicchetti)  
Division of Economics (Sibley, Hudson) *MS SH OR*  
Office of the General Counsel (Crawford) *ALM*

**RE:** Docket No. 20180042-WS – Application for approval of tariff for the gross-up of CIAC in Martin County, by Indiantown Company, Inc.

**AGENDA:** 06/05/18 – Regular Agenda – Tariff Filing – Interested Persons May Participate

**COMMISSIONERS ASSIGNED:** All Commissioners

**PREHEARING OFFICER:** Administrative

**CRITICAL DATES:** 7/1/2018 (60-Day Suspension Date)

**SPECIAL INSTRUCTIONS:** Place next to Docket No. 20180059-WU.

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### Case Background

Indiantown Company, Inc. (Indiantown or utility) is a Class A utility providing water and wastewater services in Martin County to approximately 2,181 customers. The utility reported in its 2016 annual report operating revenues in the amount of \$758,519 for water and \$1,241,519 for wastewater. The utility did not collect any contributions in aid of construction (CIAC) for 2016.

On April 20, 2018, the Commission approved CIAC gross-up tariffs for the utility. After the approval of the gross-up tariff, the utility found a typographical error found in the formula for land and cash contributions. On May 2, 2018, the utility filed a tariff reflecting the correction in the formula. Attachment A of this recommendation shows the corrected tariff in legislative format. This recommendation addresses the utility's request for approval of a corrected gross-up



Docket No. 20180042-WS  
Date: May 23, 2018

tariff. The Commission has jurisdiction pursuant to Sections 367.081 and 367.091, Florida Statutes.

### Discussion of Issues

**Issue 1:** Should Indiantown's request for approval of corrected tariff sheets be approved?

**Recommendation:** Yes, the corrected tariff filed on May 2, 2018, should be approved. The approved gross-up charges should be effective for connections made on or after the stamped approval date on the tariff sheets. (Cicchetti, Sibley, Hudson)

**Staff Analysis:** After the approval of gross-up tariffs, the utility found a typographical error in the formula for land and cash contributions. On May 2, 2018, the utility filed a corrected gross-up tariffs (Attachment A). Staff agrees that the formula contained an error and needs to be corrected. The original tariffs that were filed and approved contained an extraneous combined tax rate factor. Removing the extraneous combined tax rate factor results in the corrected formula appropriately increasing the amount collected for taxes.

Based on the above, staff recommends that the corrected tariff filed on May 2, 2018, should be approved. The approved gross-up charges should be effective for connections made on or after the stamped approval date on the tariff sheets.

**Issue 2:** Should this docket be closed?

**Recommendation:** If a protest is filed by a substantially affected person within 21 days of issuance of the order, the corrected tariffs should remain in effect, with any revenues held subject to refund, pending resolution of the protest. If no timely protest is filed, the docket should be closed upon issuance of the consummating order. (Crawford)

**Staff Analysis:** If a protest is filed by a substantially affected person within 21 days of issuance of the order, the corrected tariff should remain in effect, with any revenues held subject to refund, pending resolution of the protest. If no timely protest is filed, the order should become final upon the issuance of a consummating order.

INDIANTOWN COMPANY, INC.  
WATER TARIFF

ORIGINAL SHEET NO. 19.1

**Income Taxes Related to Cash and Property Contributions In Aid of Construction**

The utility may gross-up cash service availability charges and property contributions in aid of construction in order to recover the federal and state corporate income taxes associated with these contributions. The formula to be used to gross-up cash service availability charges and contributed property are as follows:

TAX IMPACT= Full Gross Up:

Depreciable Plant:

For utilities using straight-line depreciation for tax purposes, the gross-up formula shall be:  $(CP - (CP * (1/TL) * .5)) * (CTR / (1-CTR))$

For utilities using an accelerated rate of depreciation for tax purposes, the gross-up formula shall be:  $(CP - ((CP * AR) * .5)) * (CTR / (1-CTR))$

Land (and Cash):  $(CL * CTR) * (CTR / (1-CTR))$

Where:

CP = Contributed Plant

TL = Tax Life of Contributed Plant

AR = First Year Accelerated Depreciation Rate for Tax Purposes

CTR = Combined Federal (FT) and State (ST) Income Tax Rate.  $ST+FT (1-ST)$

CL = Contributed Land (and Contributed Cash)

EFFECTIVE DATE:

TYPE OF FILING: Tariff Filing

Jeffrey S. Leslie  
ISSUING OFFICER  
President  
TITLE



INDIANTOWN COMPANY, INC.  
WASTEWATER TARIFF

ORIGINAL SHEET NO. 18.1

**Income Taxes Related to Cash and Property Contributions In Aid of Construction**

The utility may gross-up cash service availability charges and property contributions in aid of construction in order to recover the federal and state corporate income taxes associated with these contributions. The formula to be used to gross-up cash service availability charges and contributed property are as follows:

TAX IMPACT= Full Gross Up:

Depreciable Plant:

For utilities using straight-line depreciation for tax purposes, the gross-up formula shall be:  $(CP - (CP * (1/TL) * .5)) * (CTR / (1-CTR))$

For utilities using an accelerated rate of depreciation for tax purposes, the gross-up formula shall be:  $(CP - ((CP * AR) * .5)) * (CTR / (1-CTR))$

Land (and Cash):  $(CL * CTR) * (CTR / (1-CTR))$

Where:

CP = Contributed Plant

TL = Tax Life of Contributed Plant

AR = First Year Accelerated Depreciation Rate for Tax Purposes

CTR = Combined Federal (FT) and State (ST) Income Tax Rate.  $ST+FT (1-ST)$

CL = Contributed Land (and Contributed Cash)

EFFECTIVE DATE:

TYPE OF FILING:      Tariff Filing

Jeffrey S. Leslie

ISSUING OFFICER

President

TITLE

# Item 19

State of Florida



## Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD  
TALLAHASSEE, FLORIDA 32399-0850

**-M-E-M-O-R-A-N-D-U-M-**

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**DATE:** May 23, 2018

**TO:** Office of Commission Clerk (Stauffer)

**FROM:** Division of Accounting and Finance (Cicchetti) *ALM*  
Division of Economics (Friedrich, Hudson) *MF8H PD*  
Office of the General Counsel (Crawford) *JSC*

**RE:** Docket No. 20180059-WU – Application for approval of tariff for the gross-up of CIAC in Escambia County, by Peoples Water Service Company of Florida, Inc.

**AGENDA:** 06/05/18 – Regular Agenda – Tariff Filing – Interested Persons May Participate

**COMMISSIONERS ASSIGNED:** All Commissioners

**PREHEARING OFFICER:** Administrative

**CRITICAL DATES:** 07/1/18 (60-Day Suspension Date)

**SPECIAL INSTRUCTIONS:** Place next to Docket No. 20180042-WS.

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### Case Background

Peoples Water Service Company of Florida, Inc. (Peoples or utility) is a Class A utility providing water service to approximately 12,200 customers in Escambia County. The utility reported in its 2016 annual report water operating revenues in the amount of \$3,614,440 and contributions in aid of construction (CIAC) in the amount of \$106,227.

On April 20, 2018, the Commission approved CIAC gross-up tariffs for the utility. After the approval of the gross-up tariff, the utility found a typographical error in the formula for land and cash contributions. On May 2, 2018, the utility filed a tariff reflecting the correction in the formula. Attachment A of this recommendation shows the corrected tariff in legislative format. This recommendation addresses the utility's request for approval of a corrected gross-up tariff. The Commission has jurisdiction pursuant to Sections 367.081 and 367.091, Florida Statutes.

### Discussion of Issues

**Issue 1:** Should People's request for approval of corrected tariff sheets be approved?

**Recommendation:** Yes, the corrected tariff filed on May 2, 2018, should be approved. The approved gross-up charges should be effective for connections made on or after the stamped approval date on the tariff sheets. (Cicchetti, Sibley, Hudson)

**Staff Analysis:** After the approval of the gross-up tariff, the utility found a typographical error in the formula for land and cash contributions. After the approval of gross-up tariffs, the utility found an error in the formula for land and cash contributions. On May 2, 2018, the utility filed a corrected gross-up tariff (Attachment A). Staff agrees that the formula contained an error and needs to be corrected. The original tariffs that were filed and approved contained an extraneous combined tax rate factor. Removing the extraneous combined tax rate factor results in the corrected formula appropriately increasing the amount collected for taxes.

Based on the above, staff recommends that the corrected tariff filed on May 2, 2018, should be approved. The approved gross-up charges should be effective for connections made on or after the stamped approval date on the tariff sheets.



**Issue 2:** Should this docket be closed?

**Recommendation:** If a protest is filed by a substantially affected person within 21 days of issuance of the order, the corrected tariffs should remain in effect, with any revenues held subject to refund, pending resolution of the protest. If no timely protest is filed, the docket should be closed upon issuance of the consummating order. (Crawford)

**Staff Analysis:** If a protest is filed by a substantially affected person within 21 days of issuance of the order, the corrected tariff should remain in effect, with any revenues held subject to refund, pending resolution of the protest. If no timely protest is filed, the order should become final upon the issuance of a consummating order.

PEOPLES WATER SERVICE COMPANY OF FLORIDA, INC.  
WATER TARIFF

ORIGINAL SHEET NO. 19.2

**Income Taxes Related to Cash and Property Contributions In Aid of Construction**

The utility may gross-up cash service availability charges and property contributions in aid of construction in order to recover the federal and state corporate income taxes associated with these contributions. The formula to be used to gross-up cash service availability charges and contributed property are as follows:

TAX IMPACT= Full Gross Up:

Depreciable Plant:

For utilities using straight-line depreciation for tax purposes, the gross-up formula shall be:  $((CP - (CP * (1/TL) * .5)) * (CTR / (1-CTR)))$

For utilities using an accelerated rate of depreciation for tax purposes, the gross-up formula shall be:  $(CP - ((CP * AR) * .5)) * (CTR / (1-CTR))$

| Land (and Cash):  $(CL * CTR) / (1-CTR)$

Where:

CP = Contributed Plant

TL = Tax Life of Contributed Plant

AR = First Year Accelerated Depreciation Rate for Tax Purposes

CTR = Combined Federal (FT) and State (ST) Income Tax Rate.  $ST+FT (1-ST)$

CL = Contributed Land (and Contributed Cash)

EFFECTIVE DATE:

Sherlock S. Gillet, Jr.

ISSUING OFFICER

TYPE OF FILING:      Tariff Filing

President

TITLE