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**TRADEMARK LICENSE AND
SERVICES AGREEMENT**

THIS TRADEMARK LICENSE AND SERVICES AGREEMENT is made and entered into as of this 30th day of July, 2003 (the "Effective Date"), by and between **Florida Power & Light Company**, a Florida corporation ("FPL"), and **Green Mountain Energy Company**, a Delaware corporation ("**Green Mountain**").

Premises

FPL is an electric utility with retail service territories in various areas of the State of Florida. Green Mountain is a provider and marketer of environmental retail electricity products. Green Mountain desires to provide to FPL pursuant to the terms and conditions set forth herein: (a) a license to use the GM Licensed Marks in connection with the sale of the Branded Product in the Licensed Territory; (b) Marketing and Customer Care training services with respect to the Branded Product; and (c) Green Tags and associated Product Substantiation Services to support the Customer Load for the Branded Product. FPL, pursuant to the terms and conditions set forth herein, desires to: (a) license from Green Mountain the GM Licensed Marks; (b) license to Green Mountain the FPL Licensed Marks on the terms and for the purposes set forth herein; (c) purchase Green Tags from Green Mountain; and (d) engage Green Mountain for such Marketing, Customer Care training and Product Substantiation Services. Initially capitalized terms used in this Agreement are defined in Section 1 below.

Agreement

1. Definitions.

- 1.1. "Advertising" means advertising and promotion, other than press releases, of the business association between Green Mountain and FPL pursuant to this Agreement, which may not include disclosure of any Information within and outside of the Licensed Territory, and which may not include use of the Licensed Marks (other than the other Party's name on items such as a client list) outside the Licensed Territory.
- 1.2. "Affiliated FPL Group Company" means an entity directly or indirectly controlled by, controlling or under common control with FPL. For the purposes of this definition, the term "control" means, the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such entity, whether through the ownership of voting securities, by contract or otherwise
- 1.3. "Agreement" means this Trademark License and Services Agreement, all Exhibits and Schedules referred to herein, any amendments hereto, and all Transactions entered into pursuant hereto.
- 1.4. "Attestation" is defined in Section 15.10 hereof.

- 1.5. **"Billing"** means the process of collecting amounts due from Customers.
- 1.6. **"Branded Product"** means the retail Green Electricity product to be sold pursuant to the FPL Green Pricing Program to potential Customers under the Branded Product Name, as such product is Marketed and sold under or in connection with the Licensed Marks.
- 1.7. **"Branded Product Name"** means the Sunshine Energy® mark, and any logos related thereto, which mark, and any logos related thereto, belongs to FPL and shall be a FPL Licensed Mark hereunder.
- 1.8. **"Business Day"** means any day on which Federal Reserve member banks in New York, New York are open for business.
- 1.9. **"Confidentiality Agreement"** means the Joint Nondisclosure Agreement dated August 30, 2002 by and between Green Mountain and FPL.
- 1.10. **"Customer"** means a retail customer who: (i) purchases the Branded Product from FPL; and (ii) is located in the Licensed Territory within the State of Florida.
- 1.11. **"Customer Care"** means an inbound telephone call center which shall: (i) be staffed by an adequate number of trained customer care representatives who respond to factual inquiries, sales inquiries, informational requests and complaints from potential and current Customers; and (ii) at all times maintain procedures for the handling, documenting and recording of all such inquiries, requests and complaints and for disaster recovery, all in accordance with practices, methods or acts generally accepted by a significant portion of the electric power industry in the FRCC region and in accordance with all applicable FPSC orders and regulations.
- 1.12. **"Customer Load"** means the aggregate amount of Branded Product, expressed in one (1) MWh blocks, purchased by Customers.
- 1.13. **"Default"** is defined in Section 24.1 hereof.
- 1.14. **"Due Date"** is defined in Section 15.5 hereof.
- 1.15. **"Effective Date"** has the meaning set forth in the first paragraph hereof.
- 1.16. **"Energy"** means electrical energy expressed in MWh (or kWh) of the character that passes through transformers and transmission wires where it eventually becomes alternating current, sixty (60) hertz electric energy delivered at nominal voltage.
- 1.17. **"Environmental Attributes"** means any and all fuel source, emissions and other

environmental characteristics, credits, offsets, and allowances, howsoever entitled or named, resulting from the purchase, generation or use of solar, wind, geothermal, landfill gas, hydro or other renewable resource generation, and the avoidance of the emissions attributable to such purchase, generation or use, in each case which Green Mountain purchases from suppliers and sells to FPL to fulfill Green Mountain's obligations hereunder; provided, however, that the term "Environmental Attributes" shall not include any state or federal production tax credits, production tax incentives or production tax grants generated or earned by the generation facility or facilities.

- 1.18. **"Force Majeure"** means physical or governmental causes of the kind not reasonably within the control of the Party claiming suspension and which by the exercise of due diligence such Party could not have prevented or is unable to overcome. Such causes shall include interruptions of firm transmission service relied on to make delivery, strikes, labor difficulties, shutdowns in anticipation of strikes, acts of terrorism, accidents, equipment breakdown, riots, fire, flood, hurricanes, wars, delays or interruptions in transportation, materially disruptive actions or failure to act of any government or government agency (whether or not having legal force and effect including, without limitation, any court order or any environmental compliance order or notice) or any other disabling cause or contingency not reasonably within the control of the Party claiming such event, whether of the nature or subject matter herein enumerated. Nothing contained herein, however, shall be construed to require a Party to prevent or settle a strike against its will. Economic hardship shall not constitute Force Majeure.
- 1.19. **"FPL Green Pricing Program"** means the retail Green Electricity sales program jointly planned, implemented and executed by the Parties to provide the Branded Product to Customers.
- 1.20. **"FPL Licensed Intellectual Property"** means any and all Intellectual Property owned by FPL related to the Branded Products and the FPL Green Pricing Program, excluding any Jointly Owned Intellectual Property; provided, that the term FPL Licensed Intellectual Property shall not include (i) any Intellectual Property of FPL in any way related to the Branded Products not disclosed to, provided to or shared with Green Mountain in connection with the performance by Green Mountain of its obligations under this Agreement or (ii) any other Intellectual Property of FPL.
- 1.21. **"FPL Licensed Marks"** means the FPL trademarks, service marks and logos set forth on Schedule II.
- 1.22. **"FPSC"** means the Florida Public Service Commission, or any successor entity thereto.
- 1.23. **"FRCC"** means the Florida Reliability Coordinating Council, or any successor entity thereto.
- 1.24. **"GM Licensed Intellectual Property"** means any and all Intellectual Property owned by

Green Mountain related to the Branded Products and the FPL Green Pricing Program, excluding any Jointly Owned Intellectual Property; provided, that the term GM Licensed Intellectual Property shall not include (i) any Intellectual Property of Green Mountain in any way related to the Branded Products not disclosed to, provided to or shared with FPL in connection with the performance by Green Mountain of its obligations under this Agreement or (ii) any other Intellectual Property of Green Mountain.

- 1.25. **“GM Licensed Marks”** means the Green Mountain trademarks, service marks and logos set forth on Schedule I.
- 1.26. **“Green-e”** means the renewable electric certification program administered by the Center for Resource Solutions.
- 1.27. **“Green Electricity”** means Energy generated from (i) a substantiated resource utilizing as its fuel source solar, wind, geothermal, hydro, biomass, landfill gas, or (ii) any other authorized renewable sources, as approved by the Parties.
- 1.28. **“Green Tag”** means all right, title and interest in and to the Environmental Attributes associated with Green Electricity. Without limiting the foregoing, a Green Tag shall include all Environmental Attributes and the exclusive right to claim: (i) the Green Electricity was generated by a specific generation unit, fuel or resource; and (ii) the Green Tag Reporting Rights. One (1) Green Tag shall represent the Environmental Attributes associated with one (1) MWh of Green Electricity.
- 1.29. **“Green Tag Purchase Price”** has the meaning set forth in Section 12.1 below.
- 1.30. **“Green Tag Reporting Rights”** means the right to report to any agency, authority or other party that it owns the Environmental Attributes associated with certain Green Electricity.
- 1.31. **“Green Tag Source Contracts”** means the various contracts between Green Mountain and Third Party Generator/Suppliers pursuant to which Green Mountain obtains a supply of Green Tags to fulfill its obligations under this Agreement.
- 1.32. **“Information”** means proprietary information and shall have the meaning ascribed to such term under the Confidentiality Agreement.
- 1.33. **“Initial Term”** means a time period commencing on the Effective Date of this Agreement and expiring ten (10) years after the Effective Date.
- 1.34. **“Intellectual Property”** means all U.S. and foreign patents, trade secrets, trademarks, trade names, copyrights, moral rights, designs, product designs, research, brand development, marketing tactics, message positioning and other industrial or intangible property rights of a similar nature; all grants and registrations worldwide in connection with the foregoing and

all other rights with respect thereto existing other than pursuant to grant or registration; all applications for any such grant or registration, and all corrections and amendments thereto.

The term "**moral rights**," as used in this definition, means the rights of authors and creators recognized in non-U.S. jurisdictions, including without limitation any right to divulge a work to the public, retract a work from the public, claim authorship, object to any distortion, mutilation or other modification of a work or any and all similar rights existing under judicial or statutory law of any country or jurisdiction in the world, or under any treaty regardless of whether or not such right is called or generally referred to as a moral right.

The term "**marketing tactics**," as used in this definition, includes without limitation, any financial or marketing models, marketing and sales tools, marketing training methods, marketing scripts, marketing methodologies, sales methodologies and Message Maps, and forms of consulting, employment, services and other contracts, in each case provided in connection with the execution of the Marketing of the Branded Products and Green Electricity program contemplated hereunder.

- 1.35. "**Interest Rate**" means the New York prime rate as quoted in the *Wall Street Journal* plus 1% per annum, subject to any ceiling imposed by applicable Florida usury law.
- 1.36. "**Jointly Owned Intellectual Property**" means all Intellectual Property developed, conceived, written, created or first reduced to practice by both of the Parties jointly in connection with the performance of this Agreement.
- 1.37. "**kW**" mean a kilowatt of energy capacity.
- 1.38. "**kWh**" means a kilowatt-hour of Energy.
- 1.39. "**Licensed Intellectual Property**" means the GM Licensed Intellectual Property and/or the FPL Licensed Intellectual Property, as the context so requires.
- 1.40. "**Licensed Marks**" means the GM Licensed Marks and/or the FPL Licensed Marks, as the context so requires.
- 1.41. "**Licensed Territory**" means the geographic areas within the State of Florida in which FPL is authorized to provide retail electric service to the public.
- 1.42. "**Market**", "**Marketed**" or "**Marketing**" means all mass media, customer communications and outreach activities associated with increasing and maintaining purchases of the Branded Product by potential and current Customers.
- 1.43. "**Message Map**" means a document that contains Marketing communication messages and claims that have been approved by both Parties for use in any and all Marketing materials.
- 1.44. "**Monthly Report**" is defined in Section 15.4 hereof.

- 1.45. **"MWh"** means a megawatt-hour of Energy.
- 1.46. **"New Renewable Resources"** means Green Electricity generation facilities placed in operation on or after January 1, 1999.
- 1.47. **"Operations Plan"** has the meaning set forth in Section 14.1.
- 1.48. **"Party"** means either FPL or Green Mountain.
- 1.49. **"Parties"** means both FPL and Green Mountain.
- 1.50. **"Product Substantiation Services"** means the services set forth in Section 15.10 hereof.
- 1.51. **"Program Rescission Date"** means the date on which any of FPL's necessary governmental and regulatory approvals for conducting the FPL Green Pricing Program are no longer effective.
- 1.52. **"Renewal Term"** means a time period commencing on the expiration of the Initial Term, or the expiration of a mutually agreed upon prior Renewal Term, as applicable, and continuing until a date agreed to in writing by the Parties hereto.
- 1.53. **"SERC"** means the Southeastern Electric Reliability Council, or any successor entity thereto.
- 1.54. **"Solar Resource"** means an Energy generating resource that utilizes solar radiation to produce electricity.
- 1.55. **"Solar Resource Construction Standard"** is defined in Section 18.1 hereof.
- 1.56. **"Solar Resource Project"** means a Solar Resource that Green Mountain causes to be constructed in accordance with the terms of Section 18.
- 1.57. **"Start Date"** means the date that FPL has all necessary governmental approvals to begin providing the Branded Product to Customers.
- 1.58. **"Tariff Price"** is defined in Section 12.2 hereof, as adjusted in accordance with Section 12.3.
- 1.59. **"Term"** is defined in Section 2 hereof.
- 1.60. **"Termination Date"** means the date on which this Agreement will terminate in accordance with the terms of this Agreement as a result of a Party's notice of intent to terminate.

- 1.61. **“Termination Fee”** means any payment required under the terms of Section 20.
- 1.62. **“Third Party Generator/Supplier”** means each entity that generates or holds title to Green Electricity and/or Green Tags, other than Green Mountain and FPL.
- 1.63. **“Transaction”** means a purchase and sale of Green Tags under this Agreement in an amount that equals the number of Green Tags necessary to match the reported Customer Load set forth in the Monthly Report.

2. Term.

The Term of this Agreement (the **“Term”**) shall commence on the Effective Date and continue for the Initial Term and any Renewal Terms, unless earlier terminated by either Party in accordance with this Agreement.

3. Ownership of Intellectual Property Rights.

3.1 Green Mountain will own all GM Licensed Marks and all GM Licensed Intellectual Property, subject to the license set forth in Section 4 below.

3.2 FPL will own all FPL Licensed Marks and all FPL Licensed Intellectual Property, subject to the license set forth in Section 4 below.

3.3 Green Mountain and FPL shall jointly own, with each Party having an undivided interest, all Jointly Owned Intellectual Property. A Party's ownership of, and all right, title and interest in, such Party's Licensed Marks and such Party's Licensed Intellectual Property shall not be affected by, nor transferred or conveyed to the other Party, if such Licensed Marks or Licensed Intellectual Property are included, in whole or in part, in the creation or development of the Jointly Owned Intellectual Property.

4. License of Marks.

4.1 License of GM Licensed Marks and GM Licensed Intellectual Property. Subject to the terms and conditions set forth herein, Green Mountain hereby grants to FPL a royalty-free, exclusive right and license to use the GM Licensed Marks within the Licensed Territory in connection with the Marketing and sale of the Branded Product within the Licensed Territory and in connection with Advertising. Subject to the terms and conditions set forth herein, Green Mountain hereby grants to FPL a royalty-free, non-exclusive right and license to use the GM Licensed Intellectual Property within the Licensed Territory during the Term only in connection with the Marketing and sale of the Branded Product within the Licensed Territory and in connection with Advertising. Nothing herein shall prevent Green Mountain from licensing any or all of the GM Licensed Intellectual Property to any third party (other than FPL). All rights not specifically granted to FPL herein are reserved by Green Mountain.

4.2 License of FPL Licensed Marks and FPL Intellectual Property. Subject to the terms and conditions set forth herein, FPL hereby grants to Green Mountain a royalty-free, non-exclusive right and license to use the FPL Licensed Marks in connection with the Marketing and sale of the Branded Product within the Licensed Territory and in connection with Advertising. Subject to the terms and conditions set forth herein, FPL hereby grants to Green Mountain a royalty-free, non-exclusive right and license to use the FPL Licensed Intellectual Property within the Licensed Territory during the Term only in connection with the Marketing and sale of the Branded Product within the Licensed Territory and in connection with Advertising. Nothing herein shall prevent FPL from licensing any or all of the FPL Licensed Marks to any third party (other than Green Mountain). All rights not specifically granted to Green Mountain herein are reserved by FPL.

5. Use of Licensed Marks.

5.1 Good Trademark and Business Practices. Each Party agrees to use the other Party's Licensed Marks only in accordance with good trademark and business practices. Each Party agrees that it will: (i) conduct its business with respect to the Branded product in a manner that reflects favorably at all times on the good name, goodwill and reputation of the other Party; (ii) avoid deceptive, misleading or unethical practices that are detrimental to the other Party; (iii) make no false or misleading statements with regard to the other Party or the Branded Product; and (iv) not publish or employ or cooperate in the publication or employment of any misleading or deceptive Advertising or Marketing materials.

5.2 Compliance with Usage Guidelines. Each Party agrees that it shall not use the Licensed Marks other than as permitted by this Agreement and that it shall conform to the requirements of the other Party (including, but not limited to, compliance with the other Party's trademark usage guidelines of which it has notice, as may be amended from time to time) in relation to the use of the Licensed Marks and on Marketing materials for the Branded Product or in Advertising. Each Party shall include on all printed or other tangible materials used to Market the Branded Product or in Advertising such copyright, trademark or service mark notices as are designated in the trademark usage guidelines of the other Party. Neither Party shall use alternate notices with the other Party's Licensed Marks without the prior written consent of the other Party.

5.3 Use of Party's Own Marks in Combination with the Licensed Marks. Each Party is expressly permitted to use its own marks with the other Party's Licensed Marks in accordance with the terms of this Agreement.

5.4 Use of Party's Own Marks in Licensed Territory. The Parties mutually agree that each Party reserves the right to use its own Licensed Marks in the Licensed Territory.

5.5 Confusingly Similar Marks. Each Party agrees not to use any other trademark, trade name, or other designation of source which creates a likelihood of confusion with the other Party's Licensed Marks.

5.6 Limitation on Use. Each Party agrees that it will not make use of the Licensed Marks other than as authorized in this Agreement.

5.7 Modifications to Licensed Marks. No Party shall, without prior express written consent of the other Party, use, develop or authorize the development of variations of the other Party's Licensed Marks or elements included within such other Party's Licensed Marks.

5.8 Compliance with Applicable Law. When using the Licensed Marks, each Party shall use its best efforts to comply with all laws pertaining to the Licensed Marks then in force within the Licensed Territory, including compliance with all local laws and all marking and labeling requirements.

6. No Right to Sublicense.

Neither Party may sublicense any Licensed Mark of the other Party without the prior written consent of that other Party.

7. License Non-Exclusive.

Each Party shall have the right to freely license its Licensed Marks to third parties, or make any other use of its Licensed Marks not inconsistent with the terms hereof.

8. No Other Licensed Rights; Related Matters.

8.1 Licensed Rights to FPL. This Agreement does not convey to FPL any rights to use the GM Licensed Marks, the GM Licensed Intellectual Property or other Intellectual Property of Green Mountain other than the rights set forth in Section 4 hereof; nor does this Agreement grant to FPL rights to any other Intellectual Property of Green Mountain. FPL shall not use any trademarks, service marks, logos or the like that it knows are the Intellectual Property of any third party, in conjunction with the GM Licensed Marks.

8.2 Licensed Rights to Green Mountain. This Agreement does not convey to Green Mountain any rights to use the FPL Licensed Marks, the FPL Licensed Intellectual Property or other Intellectual Property of FPL other than the rights set forth in Section 4 hereof; nor does this Agreement grant Green Mountain rights to any other Intellectual Property of FPL. Green Mountain shall not use any trademarks, service marks, logos or the like that it knows are the Intellectual Property of any third party in conjunction with the FPL Licensed Marks.

8.3 Ownership. No Party will represent that it owns the other Party's Licensed Marks, the other Party's Licensed Intellectual Property or the applications or registrations thereof, or attempt to register the other Party's Licensed Marks alone or as part of its own trademark or service mark in any jurisdiction, or attempt to register the other Party's Licensed Intellectual Property. Each Party acknowledges the other Party's exclusive right, title and interest in and to the other Party's Licensed Marks and Licensed Intellectual Property, and shall not at any time do or cause to be done any act

or thing contesting or in any way impairing or tending to impair any part of the other Party's right, title and interest. Each Party acknowledges that use of the other Party's Licensed Marks and Licensed Intellectual Property does not create in the licensee's favor any right, title or interest in or to the other Party's Licensed Marks or Licensed Intellectual Property, and that all use of the other Party's Licensed Marks and Licensed Intellectual Property by the licensee inures to the benefit of the other Party.

8.4 No Challenge. No Party will, during the term hereof or thereafter, challenge the validity or distinctiveness of the Licensed Marks. Each Party agrees that it shall not, on the basis of its use of the other Party's Licensed Marks, oppose or seek to cancel in any court or state or federal agency, including, but not limited to, the United States Patent and Trademark Office, any registration for any mark which the other Party files an application or for which such other Party obtains a registration. Except as otherwise provided in this Agreement, neither Party shall initiate any legal actions against any third party based on material or artwork that, as part of the subject matter for such action, includes the other Party's Licensed Marks, without the prior express written consent of that other Party. The Parties expressly intend and agree that all use of the other Party's Licensed Marks shall inure solely to the benefit of the other Party.

9. No Rights Outside Licensed Territory.

Except as specifically provided for herein, each Party agrees that it possesses no right to use the other Party's Licensed Marks or Licensed Intellectual Property, or sell any Branded Product outside the Licensed Territory.

10. Protection of Licensed Marks.

10.1 Unauthorized Use; Cure. If a Party uses the other Party's Licensed Marks in a manner not authorized by or approved under this Agreement, such Party shall have seven (7) days after notice from the other Party of any such unauthorized or unapproved use to cease such use and, if reasonably possible, recall and destroy all materials making such unauthorized use. If such Party does not so cure such unauthorized or unapproved use to the reasonable satisfaction of the other Party within the seven (7) day period, then the other Party may deliver to such Party a Notice of Default pursuant to Section 24 hereof. In the event that such Party cures the unauthorized or unapproved use to the reasonable satisfaction of the other Party within such seven (7) day period, its right hereunder to use the other Party's Licensed Marks shall immediately resume.

10.2 Third Party Unauthorized Use. Each Party shall notify the other Party in writing of any action by any person or entity that such Party believes constitutes an infringement, imitation, simulation or unauthorized or illegal use of any of the other Party's Licensed Marks. Such other Party shall have the sole right to determine the appropriate action to be taken against any such infringement, imitation, simulation or unauthorized or illegal use of its Licensed Marks, including the sole discretion to settle any claims or any controversy arising out of any such claims. Except for rights under the indemnity provisions hereof, neither Party shall have any rights against the other Party for damages or otherwise by reason of its determination to act or not to act with respect to any

alleged infringement, imitation or unauthorized use by others of such other Party's Licensed Marks. Each Party will render reasonable assistance to the other Party in connection with protection or enforcement of the other Party's Licensed Marks before administrative and governmental agencies and the courts, upon the other Party's reasonable request and at the expense of the Party seeking such assistance.

11. Effect of Expiration or Termination of Agreement on Licenses.

11.1 License Grant by Green Mountain upon Certain Events. Green Mountain agrees to grant to FPL a perpetual, exclusive right and license to use the GM Licensed Marks, and a perpetual, non-exclusive right and license to use the GM Licensed Intellectual Property, in each case within the Licensed Territory in connection with the Marketing and sale of the Branded Product only within the Licensed Territory, subject to the same terms and conditions as set forth herein, in the event that any of the following events occur: (i) the Agreement expires in accordance with its terms; (ii) Green Mountain terminates the Agreement without cause in accordance with the terms of Section 20.5; (iii) FPL terminates the Agreement because of an uncured Default by Green Mountain in accordance with the terms of Section 24; or (iv) FPL terminates the Agreement pursuant to Section 20.4 and FPL pays a Termination Fee in the full amount described in Section 20.4, regardless of whether such Termination Fee is (or is not) required to be paid pursuant to the terms of Section 20.4. The Parties agree to execute the license agreement provided for in this section prior to the Termination Date.

11.2 Termination of License of GM Licensed Marks; No Further Use of FPL Licensed Marks. In the event that: (i) the Agreement is terminated by either Party pursuant to Section 20.3; (ii) the Agreement is terminated by FPL pursuant to Section 20.4 and FPL does not pay a Termination Fee in the full amount described in Section 20.4, regardless of whether such Termination Fee is (or is not) required to be paid pursuant to the terms of Section 20.4; or (iii) Green Mountain terminates the Agreement because of an uncured Default by FPL in accordance with the terms of Section 24; then FPL's license to use the GM Licensed Marks and FPL's license to the GM Licensed Intellectual Property hereunder is terminated as of the Termination Date.

11.3 No Further Use of FPL Licensed Marks. FPL shall not use the Branded Product Name in the Licensed Territory or in connection with the offering of any Green Electricity product for a period of two (2) years after the Termination Date in the event that either: (i) the Agreement is terminated by FPL pursuant to Section 20.4 and FPL does not pay a Termination Fee in the full amount described in Section 20.4, regardless of whether such Termination Fee is (or is not) required to be paid pursuant to the terms of Section 20.4; or (ii) Green Mountain terminates the Agreement because of an uncured Default by FPL in accordance with the terms of Section 24.

12. Price of Branded Product.

12.1 Price to Green Mountain. The Purchase Price for the Green Tags to be purchased under this Agreement shall be [REDACTED] per 1000 kWhs (the "Green Tag Purchase Price"), which Green Tag

Purchase Price shall include Green Mountain's performance of the Marketing services and Product Substantiation Services pursuant to the terms of this Agreement

12.2 Customer Price. The price to Customers of the Branded Product per 1000 kWhs (the "Tariff Price") shall be subject to the approval of the FPSC and included in FPL's approved tariff, and such Tariff Price shall not exceed \$9.75 per 1000 kWhs of Branded Product or such lesser amount as may be agreed to in writing by the Parties and approved by the FPSC. The Tariff Price shall include up to a maximum of 0.015385 per dollar of gross receipts taxes required by Florida law to be collected and paid to the appropriate taxing authority and embedded as of the date hereof in FPL's retail tariff rate; provided, however, that such Tariff Price shall not include any gross receipts taxes required by Florida law to be collected and paid to the appropriate taxing authority by FPL either in excess of 0.015385 per dollar maximum amount or included as an additional "line item" on FPL's bills to its retail customers. The Parties acknowledge that the such additional gross receipts taxes included as a "line item" on customers' bills is currently 0.010256 per dollar.

12.3 Price Adjustment. If, at any time during the Term of this Agreement, Green Mountain experiences a material increase in the price it pays to acquire a supply of Green Tags as required under this Agreement, the Parties agree to negotiate in good faith an adjustment in the Green Tag Purchase Price and the Tariff Price, and FPL agrees to make all necessary tariff and related filings as required to gain (or attempt to gain) approval of the revised Tariff Price.

13. Marketing the Branded Product.

13.1 Marketing Rights. FPL and Green Mountain will have the exclusive right to Market the Branded Product to the Customers within the Licensed Territory during the Term of this Agreement, and FPL will not grant the right to Market the Branded Product to any third party. Green Mountain will use commercially reasonable efforts to Market the Branded Product to potential Customers during the Term of this Agreement. In the event that less than 25,000 new Customers enroll to purchase the Branded Product during any one-year period during the Term of this Agreement (measured from year to year beginning on the Start Date), then the Parties agree to enter into discussions in good faith and to consult with respect to the reallocation of Marketing resources. Green Mountain shall have the right to conduct Customer retention activities consistent with any applicable FPSC rules and regulations, which activities shall be subject to FPL's prior approval. Green Mountain will assist FPL in designing and distributing Customer satisfaction surveys. Such surveys will be sent to Customers at FPL's expense.

13.2 Marketing Plan and Activities. Green Mountain will collaborate with FPL to develop a Marketing plan for the FPL Green Pricing Program, which shall be subject to FPL's approval and which the Parties agree to have completed on or about August 1, 2003. Green Mountain will use commercially reasonable efforts to execute the Marketing plan; provided that it shall have the sole right and authority to ultimately determine which methods and expenditures among those set forth in the Marketing plan it actually uses for Marketing the Branded Product, subject to FPL's approval of such methods or expenditures.

13.3 Review and Approval of Marketing Communications. The Parties will collaborate on a Message Map for Marketing communications and Advertising. Any Marketing communications and Advertising prepared by Green Mountain in accordance with the Message Map shall be considered to be approved for distribution by FPL. Each Party will have the right to approve in advance, for the purpose of verifying its accuracy and the proper use of the Party's Licensed Marks, any general Marketing communications (excluding press releases, which are covered under Section 13.4 below) that the other Party intends to deliver or send to potential and/or current Customers which is not in accordance with the Message Map.

13.4 Press Releases. The Parties may, from time-to-time, issue press releases regarding the Branded Product and the business association of the Parties (apart from Advertising). Each Party will reasonably cooperate with such other Party in the preparation of any such press release by promptly providing factual data (that is not Information) for the press release regarding that Party, the Customers and/or the Branded Product, all as reasonably requested by such other Party. All such press releases regarding the Branded Product and the business association of the Parties (apart from Advertising) will be subject to FPL's and Green Mountain's approval prior to release.

13.5 Compliance with Law. Each Party will Market the Branded Product in compliance with applicable federal, state and local laws, including any FPSC regulations requiring advertising materials to disclose certain product content information. FPL may from time-to-time share with Green Mountain information about Florida laws and regulations and FPSC rules and orders that govern the marketing and sale of the Branded Product. Green Mountain will comply with FPL's requests for information in Green Mountain's possession and required by FPL to comply with its product content disclosure and labeling obligations under FPSC regulations. To the extent that any applicable law, rule, regulation or order conflicts with any terms or conditions of this Agreement, such applicable law, rule, regulation or order controls.

13.6 Green Mountain Disclosures. Notwithstanding the foregoing, Green Mountain will have the right to describe in any of its marketing, sales or other public messages the number of Customers purchasing Branded Product and the environmental benefits associated with such purchases, whether such messages specifically relate to Green Mountain's Marketing of the Branded Product or to Green Mountain's business more generally. Green Mountain may use FPL as a reference at conferences, on Green Mountain's website, for future business development or business cases, with FPL's prior approval.

13.7 FPSC Approval. The timing of the Marketing obligations set forth in this Section 13 shall be subject to, and adjusted in accordance with, the anticipated timing of receipt of the required FPSC approvals for the FPL Green Pricing program and the Start Date.

14. Operations Plan - Enrollment, Customer Care and Billing.

14.1 Operations Plan. Subject to the following provisions of this Section 14, the Parties will jointly develop an initial operations plan (the "**Operations Plan**") covering enrollment requirements for the Branded Product (including interface of enrollment and reporting systems), and associated

Customer Care and Billing requirements. Each Party shall, in all material respects, comply with its obligations under the Operations Plan, as amended from time-to-time.

14.2 FPL's General Responsibilities. By the Start Date, FPL shall provide enrollment services (via toll free telephone, its website and paper processes), Customer Care and Billing with regard to the Branded Product consistent with the quality standards FPL employs for its other electricity products and services. At a minimum, FPL will ensure that new Customers are enrolled in the FPL Green Pricing Program within the same time period as FPL enrolls new customers in other FPL products and services, and in no event later than five (5) Business Days of a sale to a new Customer. FPL shall ensure that any monthly premium included in the price of a Branded Product is stated on the Customer's monthly bill in accordance with FPSC requirements. FPL's enrollment services shall ensure that each Customer who moves within the Licensed Territory is automatically maintained in the FPL Green Pricing Program, subject to such Customer's approval.

14.3 FPL Green Pricing Program Enrollment Reports. Once each week during the Term, FPL will provide to Green Mountain Customer enrollment data for the prior week period, including, if available: (i) total Customer enrollments; (ii) total Customers dropped from the FPL Green Pricing Program and the reason for such drops; and (iii) total Customer enrollments by sales channel (Web, bill insert, call center, etc.).

14.4 Customer Care. FPL shall, at its expense, be responsible for appropriate customer care and escalation procedures through its Customer Care call center. FPL shall, at its expense, be responsible for handling with the FPSC and/or Customers all Customer complaints related to the Branded Product. Green Mountain will assist FPL with any Customer complaint of which it is aware and will escalate all complaints to the appropriate FPL representative within twenty-four (24) hours of becoming aware of a complaint.

14.5 Customer Care Training; Quality Assurance.

(a) As set forth in more detail in the Operations Plan, Green Mountain will conduct training sessions for FPL's Customer Care call center process coordinators relating to the sale and Marketing of the Branded Product and provide for FPL review of supporting scripts and educational materials relating to the FPL Green Pricing Program. FPL will reasonably cooperate with Green Mountain so that all training is substantially completed by the Start Date.

(b) Green Mountain may from time-to-time monitor on-site FPL's Customer Care call center operations relating to the FPL Green Pricing Program as set forth in the Operations Plan jointly developed and approved by the Parties, as described in Section 14.1. FPL will provide reports as needed and data as available to Green Mountain on operations data as described and set forth in the Operations Plan. Green Mountain will report the results of such monitoring to FPL as set forth in the Operations Plan, and consult with FPL from time-to-time to guarantee consistency and quality of information provided to Customers.

14.6 Systems Interface. Green Mountain and FPL shall mutually agree upon the preferred method of all data transfers for the Monthly Report and for other reports and data transferred pursuant to this Agreement. No later than the Start Date, FPL's website (www.fpl.com) will highlight the offering of the Branded Product and list all available options for enrollment. FPL's home page will maintain a link to its own web page for the offering of the Branded Product. Green Mountain's website (www.greenmountain.com) may also highlight the offering of the Branded Product, including without limitation the information described in Section 13.6, and maintain a link to relevant FPL web pages; provided, however, that no Customers shall be enrolled to purchase any Branded Product in the FPL Green Pricing Program from Green Mountain's website.

15. Green Tag Transactions.

15.1 Sale and Purchase of Green Tags. Pursuant to the procedures set forth below and subject to Section 15.7, Green Mountain will sell to FPL, and FPL will purchase exclusively from Green Mountain, an amount of Green Tags which, on a calendar year basis (or portion thereof), equals the amount of Green Tags necessary to match the reported Customer Load during the applicable period in accordance with: (i) Green-e timeline standards, as such timeline standards may be adjusted from time to time; (ii) applicable law or regulation; and (iii) Section 15.8 below. During the Term of this Agreement, FPL will purchase the Green Tags that cover the Customer Load exclusively from Green Mountain. Green Mountain will deliver to FPL one (1) Green Tag for every one (1) MWh of Customer Load. Green Tags purchased by FPL hereunder shall be matched with the Customer Load as set forth herein so that such Green Tags are effectively retired, and in no event shall any such Green Tags matching the Customer Load be resold by FPL to any third party (other than as part of the sale to Customers of the Branded Product). Notwithstanding the foregoing, in the event that Green Mountain is unable to sell to FPL a sufficient number of Green Tags to cover the reported Customer Load within the Green-e timeline standards, nothing herein shall prevent FPL from purchasing from a third party Green Tag supplier any such Green Tags which Green Mountain is unable to provide to FPL. In the event of a Default by Green Mountain as a result of its failure to procure a sufficient number of Green Tags to meet its obligations pursuant to Section 15.8, FPL may, after providing a Notice of Default and opportunity to cure as set forth in Section 24 below, purchase from a third party at fair market value only the number of Green Tags equal to the number of Green Tags Green Mountain would be required to purchase to meet its obligations pursuant to Section 15.8, of the resource type necessary to match the product content of the Branded Product; provided that FPL shall use its commercially reasonable efforts to mitigate the costs and price of any such purchase. Green Mountain agrees to reimburse FPL, for each such Green Tag purchased in accordance with the terms of this Section 15.1, an amount equal to the amount, if any, by which the fair market value paid by FPL for such Green Tag exceeds an amount equal to the Green Tag Purchase Price. Notwithstanding the foregoing, in the event that Green Mountain elects to terminate this Agreement pursuant to Section 20.5 in connection with such Default, Green Mountain's total aggregate liability to FPL under both this Section 15.1 and Section 20.5 shall not exceed the Termination Fee payable by Green Mountain as set forth in Section 20.5.

15.2 Green-e timeline standards. The Parties acknowledge that the Green-e timeline standards currently provide that tags for a product in a given calendar year may be generated in such calendar

year, in the last six (6) months of the previous calendar year, and in the first (1st) quarter of the subsequent calendar year. Any final true-up required to match the amount of Green Tags to the reported Customer Load in a given calendar year will be completed (i) by the first (1st) quarter of the subsequent calendar year in accordance with Green-e timeline standards, as such timeline standards may be adjusted from time to time, and (ii) in accordance with applicable law and regulation. Notwithstanding anything contained herein, Green Mountain shall have no obligation to seek Green-e certification or verification of the Branded Product, the Green Tags or any portion thereof.

15.3 Source of Green Tags. Green Mountain will acquire and supply to FPL the amount of Green Tags required under this Agreement from generators of Green Electricity located within FRCC, SERC, and additional geographic areas that are mutually approved by FPL and Green Mountain. Green Mountain will use commercially reasonable efforts to (i) obtain as many of the Green Tags as is commercially reasonable from Green Electricity generated within the State of Florida, and (ii) obtain a minimum of fifteen percent (15%) of the Green Tags from New Renewable Resources located within the State of Florida by the beginning of calendar year 2005 (on a going-forward basis); provided, however, there will be no penalty to Green Mountain under this Agreement nor will it be considered a Default if Green Mountain is unable to comply with this provision. If FPL or an Affiliated FPL Group Company (or any other entity related to FPL) builds one or more solar generation facilities located within the Licensed Territory, (a) Green Mountain shall, to the extent necessary to supply to FPL the amount of Green Tags required under this Agreement and to the extent commercially reasonable, purchase Green Tags from such facilities at a price not to exceed [REDACTED] per MWh of Green Tag or such other price as may be mutually agreed to by the Parties in writing, and (b) FPL shall sell, or use its best efforts to cause to be sold (in the event FPL does not own or otherwise control such solar generation facilities), to Green Mountain any and all such Green Tags from any such solar generation facilities which Green Mountain requires pursuant to the terms of this Section 15.3.

15.4 Monthly Customer Load Report. Within five (5) days after the end of each FPL cycle month (as defined below), FPL will deliver to Green Mountain a report (the "**Monthly Report**") indicating (i) the total number of Customers during the immediately preceding calendar month, (ii) the aggregate Customer Load for such month, and (iii) such other enrollment, cancellation and Customer information as mutually agreed in the Operations Plan. For the purposes of this Agreement, the term "**FPL cycle month**" shall mean FPL's billing cycle of a period of a month or less. FPL shall give Green Mountain written notice on a yearly basis in advance of the start and end dates of such FPL billing cycle months.

15.5 Payment for Green Tags. Within fifteen (15) days after the end of each FPL cycle month (the "**Due Date**"), FPL will pay Green Mountain via automated clearing house ("**ACH**") or wire transfer an amount equal to the product of (x) the Green Tag Purchase Price multiplied by (y) the Customer Load set forth in the Monthly Report for such month; as adjusted upward or downward to reflect any Customer enrollment errors relative to the previous month.

15.6 Enrollment Error; Customer Load Error. Subject to Section 15.7, in the event a Customer enrollment error or Customer Load error is discovered in the information provided in a Monthly

Report, FPL shall include a reconciliation section in the Monthly Report subsequent to the discovery of the error. Green Mountain and FPL will use the information contained in such section of the Monthly Report to reconcile the Customer enrollment errors and Customer Load errors with the previously reported Customer Load. Any excess of Green Tags purchased by FPL resulting from the discovery of a Customer enrollment error or Customer Load error may be carried forward and applied to the reported Customer Load in a subsequent period during that calendar year; except for Customer enrollment errors or Customer Load errors reported to Green Mountain in the Monthly Report for December of a given year may be carried forward and applied to the reported Customer Load in January of the subsequent year, subject to Section 15.7 and subject to any limitations imposed by applicable law or regulation or by Green-e timeline standards as amended after the date hereof.

15.7 Customer Load Error/Variance Limitation. Notwithstanding any provision contained herein and unless the Parties otherwise agree in writing, FPL shall have the sole obligation to purchase Green Tags to match any variance or error in Customer Load in excess of the Customer Load reported by FPL in the initial Monthly Report for such month, and Green Mountain shall have no obligation to sell or deliver to FPL any Green Tags to match such variance or error in Customer Load in excess of the Customer Load reported by FPL in the initial Monthly Report for such month, in each case only to the extent that: (i) the actual Customer Load (including such variance or error) as reported to Green Mountain on or prior to the Variance Reporting Cut-Off Date exceeds the Customer Load reported to Green Mountain in the initial Monthly Report for such applicable month by more than ten percent (10%); or (ii) such variance or error in the actual Customer Load is reported by FPL to Green Mountain after the earlier of: (x) the delivery due date of the immediate subsequent Monthly Report (covering the month immediately after the month covered by the Monthly Report which initially contained the error in Customer Load), as set forth in Section 15.4; or (y) January 31 of the year following the calendar year covered by such Monthly Report (such earlier date, the "**Variance Reporting Cut-Off Date**"). The Parties agree that Green Mountain may, in its discretion, adjust the Variance Reporting Cut-Off Date in order to meet Green-e timeline standards, as such standards may be amended from time to time, or as required in order to comply with applicable laws or regulations, as amended, by providing FPL written notice of such adjustment; provided, however, that such adjustment shall be subject to FPL's consent, not to be unreasonably delayed or withheld.

15.8 Periodic Green Tag Confirmation by Green Mountain. On or before January 15, 2004, Green Mountain will provide confirmation to FPL that Green Mountain has acquired Green Tags equal to one hundred percent (100%) of the Customer Load reported during the period from the Effective Date to December 31, 2003. On or before April 15, 2004, Green Mountain will provide confirmation to FPL that Green Mountain has acquired Green Tags equal to one hundred percent (100%) of the Customer Load reported during the period from January 1, 2004 through March 31, 2004. On or before July 15, 2004, Green Mountain will provide confirmation to FPL that Green Mountain has acquired Green Tags equal to one hundred percent (100%) of the Customer Load reported during the period from April 1, 2004 through June 30, 2004. On or before October 15, 2004, Green Mountain will provide confirmation to FPL that Green Mountain has acquired Green Tags equal to one hundred percent (100%) of the Customer Load reported during the period from

July 1, 2004 through September 30, 2004. On or before January 15, 2005, Green Mountain will provide confirmation to FPL that Green Mountain has acquired Green Tags equal to one hundred percent (100%) of the Customer Load reported during the period from October 1, 2004 through December 31, 2004. Thereafter, the Parties agree to meet in good faith after calendar year 2004 (either by telephone or in person) to consider and discuss appropriate supply reporting obligations for the FPL Green Pricing Program. Nothing herein shall be construed to obligate Green Mountain to continue reporting on a quarterly (or any other) basis after January 15, 2005 that it has acquired Green Tags equal to the Customer Load as described in this Section 15.8.

15.9 Late Payment. Any amounts not paid by the Due Date shall be deemed to be delinquent and shall, beginning on such date, accrue interest at the Interest Rate.

15.10 Product Substantiation Services. Green Mountain shall deliver to FPL, in order for Green Mountain to meet its obligations under Section 15.1 hereof: (i) a copy of each Third Party Generator/Supplier or wholesale power provider attestation (“**Attestation**”) to the sale of Green Tags to Green Mountain; (ii) a certificate from Green Mountain indicating the allocation of such Green Tags to the account of FPL if the Attestation covers an amount of Green Tags exceeding the applicable Customer Load; and/or (iii) a wholesaler Attestation from Green Mountain. Green Mountain shall cause each such certificate or Attestation to be duly executed by an authorized representative of such Third-Party Generator/Supplier or wholesale power provider, and shall deliver each such Attestation to FPL within Green-e timeline standards for delivery of annual verification procedures reports to the Center for Resource Solutions, as such timeline standards may be adjusted from time to time. The Parties acknowledge that under the current Green-e timeline standards, such Attestations must be delivered in no event later than, for an Attestation covering a given calendar year, April 30th of the following year. Any final true-up required for a calendar year will be completed by the first quarter of the subsequent year in accordance with Green-e standards.

15.11 Substantiation Records. For a period of five (5) years from the date of each Transaction, or such later period as may be required by the FPSC, Green Mountain shall maintain, adequate records relating to Product Substantiation Services provided to FPL.

15.12 Assignment of Green Tag Source Contracts.

(a) If this Agreement: (i) expires in accordance with its terms; (ii) is terminated by FPL because of an uncured Default by Green Mountain; (iii) is terminated by Green Mountain without cause in accordance with the terms of Section 20.5; or (iv) is terminated by Green Mountain pursuant to Section 20.7, FPL shall have an option to require Green Mountain to assign to it all of Green Mountain’s Green Tag Source Contracts (to the extent such contracts are assignable and to the extent that Green Mountain has continuing rights to purchase Green Tags under such contracts). Such option must be exercised by FPL not later than thirty (30) calendar days after the expiration date of this Agreement or any Termination Date, or it shall expire.

(b) If this Agreement: (i) is terminated by Green Mountain because of an uncured Default by FPL; or (ii) is terminated by FPL in accordance with the terms of Section 20.7 at any time after

the Tariff Price is initially approved by the FPSC; Green Mountain shall have an option to assign to FPL all of Green Mountain's Green Tag Source Contracts (to the extent such contracts are assignable). Such option must be exercised by Green Mountain not later than thirty (30) calendar days after the expiration date of this Agreement or any Termination Date, or it shall expire. Green Mountain agrees to make commercially reasonable efforts to ensure that all such Green Tag Source Contracts are assignable in such event.

(c) If this Agreement is terminated by FPL in accordance with the terms of Section 20.4 and FPL pays a Termination Fee in the full amount described in Section 20.4, regardless of whether such Termination Fee is (or is not) required to be paid pursuant to the terms of Section 20.4; FPL shall have an option to require Green Mountain to assign to it all of Green Mountain's Green Tag Source Contracts (to the extent such contracts are assignable and to the extent that Green Mountain has continuing rights to purchase Green Tags under such contracts). Such option must be exercised by FPL not later than thirty (30) calendar days after the expiration date of this Agreement or any Termination Date, or it shall expire.

16. Inspection of Relevant Records.

16.1 By Green Mountain. FPL shall keep complete, accurate, and verifiable records at its principal place of business showing its use of the GM Licensed Marks, and, to the standards required of FPL by the FPSC, all sales of the Branded Product to Customers. Green Mountain, or its duly authorized representatives, shall have the right, upon reasonable advance notice and during FPL's normal business hours, to at its own expense inspect at their usual location(s) such records in order to verify the accuracy of the information reported by FPL to Green Mountain hereunder and FPL's compliance with other terms set forth herein.

16.2 By FPL. Green Mountain shall keep complete, accurate, and verifiable records at its principal place of business showing its use of the FPL Licensed Marks and its purchases of Green Tags, as well as copies of any and all materials related to the Green Tags. FPL, or its duly authorized representatives, shall have the right, upon reasonable advance notice and during Green Mountain's normal business hours, to at its own expense inspect at their usual location(s) such records in order to verify the accuracy of the information reported by Green Mountain to FPL hereunder and Green Mountain's compliance with other terms set forth herein.

17. No Other Green Electricity Products to Residential Customers.

17.1 During the Term of this Agreement, FPL shall not offer to residential consumers within the Licensed Territory any Green Electricity product other than the Branded Product.

17.2 FPL retains the right to consider additional Green Electricity products to other non-residential customer classes not included within the FPL Green Pricing Program. Nothing herein shall prevent the continuation, start-up or expansion of any FPL energy conservation programs either (a) for residential customers, provided that such energy conservation programs do not involve the sale of any Green Electricity products and/or (b) for non-residential customers.

18. Commitment to Construct Solar Resource Projects.

18.1 **General Commitment.** Subject to 18.2, Green Mountain commits to supplying FPL with 150 kW of Solar Resource capacity in the Licensed Territory for every 10,000 Customers enrolled in the FPL Green Pricing Program (the “**Solar Resource Construction Standard**”). Green Mountain shall use its commercially reasonable efforts to construct, or cause the construction of, each such 150 kW of Solar Resource capacity within one (1) year after meeting the applicable 10,000 Customers enrolled threshold. To the extent Green Mountain supplies FPL with any new Solar Resource Project in the Licensed Territory, (i) FPL agrees to enter into a power purchase agreement to purchase all Energy generated by the Solar Resource Projects for its Branded Product at FPL’s avoided-as available cost, and (ii) Green Mountain agrees to purchase the Green Tags produced by such Solar Resource Projects and sell them to FPL on an as-needed basis in accordance with the terms of this Agreement and Section 15.3. FPL agrees that the contracts to purchase Green Tags from the Solar Resource Projects will be automatically assigned to FPL if Green Mountain defaults in its obligations under such contracts.

18.2 **Initial Commitment; Additional Solar Resource Projects.** Green Mountain agrees to cause to be built, within one (1) year after the Start Date, a Solar Resource Project with a minimum 50 kW capacity in the Licensed Territory. FPL and Green Mountain will collaborate on the timing and location of the initial Solar Resource Project, which will be considered as complying with a portion of the Solar Resource Construction Standard. Any additional Solar Resource Projects shall be negotiated and agreed to by each of the Parties.

19. Provision of Energy by FPL; Regulatory Matters.

19.1 **Provision of Energy.** FPL shall be responsible for providing all Energy to Customers, in compliance with applicable federal, state and local laws including, without limitation, FPSC rules, regulations, tariffs and orders.

19.2 **Regulatory Matters.** FPL agrees to make commercially reasonable efforts to obtain, prior to the Start Date, all necessary regulatory approvals from any governmental authority having jurisdiction over the FPL Green Pricing Program, including without limitation all necessary regulatory approvals from the FPSC. The Parties anticipate and estimate that the Start Date shall occur on or before November 1, 2003. FPL shall be the sole contact for interactions with the FPSC or with FPL’s environmental stakeholders in connection with the FPL Green Pricing Program; provided that Green Mountain may elect, at its option, to assist FPL in such interactions, subject to FPL’s approval. The Parties agree to cooperate with regard to FPL obtaining all necessary regulatory approvals for the FPL Green Pricing Program. FPL agrees to provide timely information to Green Mountain regarding any regulatory or legislative proceeding that could impact the FPL Green Pricing Program.

20. Termination.

20.1 Termination at End of Initial Term. If the Parties do not execute a written amendment to this Agreement, containing terms and conditions as agreed to by the Parties, for a Renewal Term on or before the eighth (8th) anniversary of the Effective Date, this Agreement shall expire as of the end of the Initial Term. In the event this Agreement expires at the end of the Initial Term, FPL shall have the right to continue the FPL Green Pricing Program without change, except that Green Mountain shall have no further obligations hereunder after such termination.

20.2 Termination at End of Any Renewal Term. If the Parties do not execute a written amendment to this Agreement specifying the Tariff Price, terms and conditions for a subsequent Renewal Term on or before the fourth anniversary of the commencement of any Renewal Term, the Agreement shall expire at the end of the current Renewal Term. In the event this Agreement expires at the end of any Renewal Term, FPL shall have the right to continue the FPL Green Pricing Program without change, except that Green Mountain shall have no further obligations hereunder after such termination.

20.3 Termination Due to Rescission of the FPL Green Pricing Program. In the event that FPL's authority to conduct the FPL Green Pricing Program is rescinded within eighteen (18) months of the Start Date because of (i) a rule or order of a governmental or regulatory authority having jurisdiction over the FPL Green Pricing Program; or (ii) a legislative proceeding or enactment; either Party may terminate this Agreement by giving one hundred eighty (180) calendar days written notice to the other Party of its intent to terminate pursuant to this Section. The Parties agree that if the Program Rescission Date occurs prior to the Termination Date that would otherwise occur under this Section, the Parties shall have no further obligations to each other after such Program Rescission Date except for the payment of amounts for services previously provided and the payment of the Termination Fee as set forth herein. If this Agreement is terminated by either Party pursuant to this Section 20.3, FPL agrees to pay a Termination Fee to Green Mountain in an amount calculated as the

[REDACTED] except that FPL shall have no obligation to pay a Termination Fee pursuant to this Section 20.3 in the event that all of the following conditions are met: (a) the recovery by FPL of such Termination Fee under the Energy Conservation Cost Recovery ("ECCR") clause is prohibited by statute or by order of the FPSC; (b) such statute or FPSC order prohibiting recovery of such Termination Fee under the ECCR clause does not result or arise from the petition, request, application or similar act by or on the part of FPL (or any Affiliated FPL Group Company or related entity), which seeks prohibition of such recovery of the Termination Fee; and (c) FPL has used its best efforts to seek FPSC approval of recovery under the ECCR clause of all FPL Green Pricing Program costs including all payments and expenses under this Agreement, including FPL's filing of an appropriate petition for such FPSC approval no later than the time that FPL files the initial tariff for the FPL Green Pricing Program, and continuing such efforts until a final order of the FPSC, not subject to any further appeals, is entered regarding the proposed recovery of all payments and expenses under this Agreement, including, without limitation, the Tariff Price, the Termination Fee, and all other payments under this Agreement, as applicable. Payment of any Termination Fee required under this Section shall

be due on or before the Termination Date specified in the terminating Party's notice of intent to terminate.

20.4 Early Termination by FPL. Provided that FPL is not then the subject of an uncured Default, FPL may terminate this Agreement at any time for any reason or no reason by giving Green Mountain one hundred eighty (180) calendar days prior written notice of its intent to cancel. If FPL terminates the Agreement pursuant to this Section 20.4, FPL agrees to pay a Termination Fee to Green Mountain in an amount calculated as:

[REDACTED]

In the event the effective date of the notice of termination occurs less than three (3) years after the Start Date of the Green Electricity program, then the number of customers enrolled on the date three (3) years prior to the effective date of the notice of termination shall be zero. FPL may pay any Termination Fee required under this Section in equal monthly installments over a period not to exceed twenty-four (24) months from the Termination Date. The Termination Fee provided for in this Section is exclusive of any amounts owed by either Party to the other under this Agreement for services provided prior to the Termination Date. Notwithstanding the foregoing, in the event FPL terminates the FPL Green Pricing Program in its entirety, no termination fee shall be payable by FPL pursuant to this Section 20.4. In the event FPL terminates this Agreement pursuant to this Section 20.4 and does not, for any reason, pay the full Termination Fee as described in this Section 20.4 above, regardless of whether such Termination Fee is (or is not) required to be paid pursuant to the terms of this Section 20.4, then for a period of two (2) years after such termination, FPL shall not offer to residential customers within the Licensed Territory any Green Electricity product, including without limitation any product similar to the Branded Product (subject to the reservation of rights set forth in Section 17.2). In the event that FPL terminates this Agreement pursuant to this Section 20.4 above, and pays the full Termination Fee as described in this Section 20.4 above, regardless of whether such Termination Fee is (or is not) required to be paid, FPL shall have the right to continue the FPL Green Pricing Program without change, except that Green Mountain shall have no further obligations hereunder after such termination. In the event that a bonafide dispute exists between the Parties regarding the amount of the Termination Fee or whether FPL is required to pay a Termination Fee, the Parties agree to continue the FPL Green Pricing Program until such dispute is resolved and proceed with termination in accordance with the resolution agreed to by the Parties.

20.5 Early Termination by Green Mountain. Provided that Green Mountain is not then the subject of an uncured Default (other than a Default by Green Mountain as a result of its failure to procure a sufficient number of Green Tags to meet its obligations under Section 15.1 and 15.8), Green Mountain may terminate this Agreement for any reason or no reason by giving FPL one hundred eighty (180) calendar days prior written notice of its intent to cancel. If Green Mountain terminates the Agreement pursuant to this Section 20.5, Green Mountain agrees to pay FPL a Termination Fee in an amount calculated as the lesser of:

[REDACTED]

[REDACTED] In the event the effective date of the notice of termination occurs less than three (3) years after the Start Date of the Green Electricity program, then the number of customers enrolled on the date three (3) years prior to the effective date of the notice of termination shall be zero. Green Mountain may pay any Termination Fee required under this Section in equal monthly installments over a period not to exceed twenty-four (24) months from the Termination Date. The Termination Fee provided for in this Section is exclusive of any amounts owed by either Party to the other under this Agreement for services provided prior to the Termination Date. Provided that FPL is not the subject of an uncured Default as of the Termination Date, in the event that Green Mountain terminates this Agreement pursuant to this Section 20.5, Green Mountain agrees not to provide any Green Electricity products to residential customers within the Licensed Territory for a period of two (2) years from the Termination Date.

20.6 Termination for Uncured Default. Either Party shall have the right to terminate this Agreement pursuant to Section 24 hereof.

20.7 Termination for FPSC Pricing.

(a) FPL shall have the right to terminate this Agreement, by giving Green Mountain ninety (90) days prior written notice of its intent to cancel, at any time, in the event that the Tariff Price to Customers of the Branded Product approved by the FPSC is materially less than \$9.75 per 1000 KWhs of Branded Product and as a result the Green Electricity program contemplated hereby becomes and remains commercially unreasonable for FPL; provided, however, that the Parties shall use their best efforts during such ninety (90) period to seek the FPSC's approval of an adjustment of such Tariff Price, as applicable, which will make such Green Electricity program hereunder not commercially unreasonable to FPL. FPL's ability to terminate pursuant to this Section 20.7 shall not apply in the event the FPSC approves any such adjustment and such Green Electricity program hereunder is no longer commercially unreasonable to FPL.

(b) Green Mountain shall have the right to terminate this Agreement, by giving FPL ninety (90) days prior written notice of its intent to cancel, at any time, in the event the Tariff Price to Customers of the Branded Product approved by the FPSC exceeds \$9.75 per 1000 KWhs of Branded Product (or such higher amount as may be agreed to by the Parties in writing) and as a result the Green Electricity program contemplated hereby becomes and remains commercially unreasonable for Green Mountain, as determined by Green Mountain in its sole discretion; provided, however, that the Parties shall use their best efforts during such ninety (90) period to seek the FPSC's approval of a reduction of such Tariff Price, as applicable, which will make such Green Electricity program hereunder not commercially unreasonable to Green Mountain. Green Mountain's ability to terminate pursuant to this Section 20.7 shall not apply in the event the FPSC approves any such adjustment and such Green Electricity program hereunder is no longer commercially unreasonable to Green Mountain.

20.8 Termination for Lack of Initial FPSC Approval. This Agreement shall terminate automatically in the event that the FPSC fails to grant, on or prior to March 31, 2004 (or such other

date as the Parties may agree to in writing) and prior to the Start Date, any material FPSC approvals which are required prior to commencement of the FPL Green Pricing program.

20.9 Termination for Other Specified Events. In the event of the occurrence of any of the following events, either Party shall have the right to terminate this Agreement immediately upon providing written notice to the other Party if such Party: (A) 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; (B) makes a general assignment, arrangement, or composition with or for the benefit of its creditors; (C) 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 (I) 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 (II) is not dismissed, discharged, stayed, or restrained in each case within thirty (30) days of the institution or presentation thereof; (D) passes a resolution for its dissolution, winding-up, or liquidation; (E) 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 of its assets; (F) has a secured Party take possession of all or substantially all of its assets or has a distress, execution, attachment, sequestration, or other legal process levied, enforced, or sued on or against all or substantially all of its assets and such secured Party maintains possession, or any such process is not dismissed, discharged, stayed, or restrained, in each case within thirty (30) days thereafter; (G) causes or is subject to any event with respect to it which, under the applicable laws of any jurisdiction, has an effect analogous to any of the events specified in clauses (A) through (G) (inclusive); or (H) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts.

21. Mutual Representations and Warranties.

Each Party represents and warrants to the other that: (i) it has the right to enter into this Agreement; (ii) the person signing below has the authority to execute this Agreement; (iii) as of the Start Date, it will the authority to perform the services contemplated by this Agreement; (iv) the Party's performance under this Agreement does not conflict with any other agreement to which such Party is subject or is bound; and (v) any and all necessary actions, corporate or otherwise, have been taken to authorize the execution and delivery of this Agreement, which constitutes a valid and binding obligation of the Party enforceable against the Party in accordance with the terms hereof, except as may be limited by applicable bankruptcy law or equitable principles generally.

22. Release of Information.

FPL hereby agrees that Green Mountain may release Information to the following: Green Mountain's authorized contractors, marketers, representatives, telemarketers (if any), agents, officers and employees. Green Mountain will make each such Party aware that the Information so provided is subject to the terms of the Confidentiality Agreement and should not be disclosed. If requested by

FPL, Green Mountain shall require any third party contractor, marketer or telemarketer to execute a non-disclosure agreement with FPL, prior to FPL's release of any information to such third party contractor (not including Green Mountain's accountants, attorneys or financial advisors), marketing or telemarketing company. Green Mountain acknowledges that information and factual data about Customers, including names, addresses and other personal information, is Information. Such Information shall not be used for any purpose other than to perform services pursuant to this Agreement.

23. Indemnification; Related Matters.

23.1 **Duty to Indemnify.** Each Party (the "**Indemnifying Party**") hereby agrees to defend, indemnify and hold harmless the other Party and its directors, officers, employees and agents (each, an "**Indemnified Party**"), from and against any and all claims, demands, actions, causes of action, losses, costs, expenses, liabilities and damages, including interest at the Interest Rate, penalties and reasonable attorneys' fees (including those at trial or on appeal), that any Indemnified Party shall incur or suffer which arise or result from the Indemnifying Party's Default under its obligations under this Agreement or from trademark, service mark, trade dress or copyright infringement related to the Indemnified Party's use of the Indemnifying Party's Licensed Marks pursuant to the terms of this Agreement, except to the extent caused by the Indemnified Party's (i) breach of any representation, warranty or agreement contained in this Agreement or (ii) negligence or willful misconduct.

23.2 **Indemnity Procedure.** The Indemnified Party shall notify the Indemnifying Party promptly of any claim under this Section 23. The Indemnifying Party shall afford the Indemnified Party the opportunity to defend or participate in the defense of such claim at such Indemnified Party's expense. The Indemnifying Party shall make no settlement of an indemnified claim specifically naming or directly affecting the Indemnified Party without the Indemnified Party's prior written approval, which approval shall not be unreasonably withheld or delayed. The obligations set forth in this Section 23 shall survive following termination of this Agreement with respect to any claim until the statute of limitations applicable to such claim has run.

23.3 **Mitigation; Limitation.** If a Party breaches this Agreement, the non-breaching Party shall use commercially reasonable efforts to mitigate any and all damages arising from the breach. **NEITHER PARTY WILL BE LIABLE TO THE OTHER FOR SPECIAL, CONSEQUENTIAL, INCIDENTAL, EXEMPLARY OR PUNITIVE DAMAGES FOR A BREACH OF THIS AGREEMENT, REGARDLESS OF WHETHER SUCH DAMAGES ARE CLAIMED UNDER CONTRACT, WARRANTY, INDEMNITY, TORT OR ANY OTHER THEORY AT LAW OR IN EQUITY.**

24. Default.

24.1 **Default.** There shall be a default ("**Default**") under this Agreement if: (i) a Party fails to pay any amount due under this Agreement; (ii) a Party fails to perform any material obligation imposed upon that Party by this Agreement; (iii) any Party provides materially incorrect information to the

other Party or to any governmental or regulatory authority having jurisdiction over the FPL Green Pricing Program; or (iv) Green Mountain fails to meet minimum requirements for Customer enrollment as specified in the Marketing plan agreed to by the Parties. The Party in Default under this Agreement shall be referred to as the “**Defaulting Party**,” and the other Party shall be referred to as the “**Non-Defaulting Party**.”

24.2 Notice of Default. The Non-Defaulting Party shall have the right to give the Defaulting Party a written Notice of Default, which shall describe the Default in reasonable detail and state the date by which the Default must be cured. Upon receipt by the Non-Defaulting Party of such Notice of Default, senior representatives of each Party shall, within three (3) Business Days, meet (in person or by telephone conference) and try to resolve the dispute. Unless otherwise agreed by the Parties: in the case of a failure to pay money when due, the Default must be cured within five (5) Business Days after receipt of the Notice of Default; in the case of all other Defaults, except as otherwise provided, the Default must be cured within ten (10) Business Days after receipt of the Notice of Default.

24.3 Opportunity to Cure. If within the applicable period described in Section 24.2 hereof, the Defaulting Party cures the Default, or if the failure is one (other than the failure to make payments) that cannot in good faith be corrected within such period and the Defaulting Party begins to correct the Default within the applicable period and continues corrective efforts with reasonable diligence until a cure is effected, the Notice of Default shall be inoperative, and the Defaulting Party shall lose no rights under this Agreement. If, within the specified period, the Defaulting Party does not cure the Default or begin to cure the Default as provided above, the Non-Defaulting Party may exercise the remedy set forth in Section 24.4 hereof.

24.4 Rights upon Default. After providing notice and an opportunity to cure as provided above, the Non-Defaulting Party shall have the right (but not the duty) to terminate this Agreement by giving written notice to the Defaulting Party.

24.5 Remedies Not Exclusive. Each and every power and remedy given to the Non-Defaulting Party (i) shall be in addition to every other power and remedy now or hereafter available to the Non-Defaulting Party at law or in equity (including the right to specific performance), (ii) may be exercised from time-to-time and as often and in such order as may be deemed expedient, and (iii) shall be cumulative, so that the exercise of one power or remedy shall not waive the right to exercise any other or others. No delay or omission in the exercise of any power or remedy and no renewal or extension of any performance due under this Agreement shall impair any such power or remedy or waive any Default.

25. No Solicitation or Hiring.

Without the other Party’s prior written consent, during the Term of this Agreement and for a period of one (1) year following expiration or termination hereof, neither Party shall directly or indirectly solicit for employment, any employee of the other Party. The advertisement of a position available to members of the public generally and not directed specifically toward an employee(s) of the other

Party shall not constitute a breach of this provision; provided, that the advertising Party does not directly advise the other Party's employee(s) that such position is available or otherwise encourage such employee(s) to apply for the position.

26. Assignment.

Except as otherwise provided herein, neither Party shall assign any of its rights hereunder, or delegate any of its obligations hereunder, without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed if adequate performance assurances are provided. Notwithstanding the foregoing, either Party may, upon reasonable prior notice and providing adequate performance assurances but without obtaining consent from the other Party, assign its rights and delegate its obligations under this Agreement to (i) a person or entity directly or indirectly controlling, controlled by or under common control with that Party, or (ii) any person or entity succeeding to all or substantially all of the assets of such Party through an acquisition, merger or other business combination.

27. Relationship of the Parties.

The relationship of the Parties under this Agreement is that of independent contractors. This Agreement is not intended to create a partnership or any other co-owned enterprise. Except as specifically provided herein, each Party shall continue to have the right to contract independent of the other Party with individuals and entities. Each Party shall be responsible for its own operating expenses and personnel expenses.

28. Governing Law.

This Agreement is entered into and shall be governed by, and construed and enforced in accordance with, the laws of the State of Florida, without regard to its principles governing conflicts of laws.

29. Force Majeure.

In the event either Party is rendered unable, by reason of Force Majeure, to carry out wholly or in part its obligations under the provisions hereunder, it is agreed that if such Party gives notice and full particulars of such event of Force Majeure to the other Party as soon as practicable after the occurrence of the cause relied on, then the obligations of the Party affected by such event of Force Majeure, other than the obligation to make payments then due or becoming due hereunder, shall be excused from the inception and throughout the period of continuance of any such inability so caused, but for no longer period, and such event of Force Majeure shall, as far as practicable, be remedied with all reasonable dispatch. If an event of Force Majeure continues for more than ninety (90) days, either Party may terminate this Agreement by giving the other Party written notice of its intent to cancel.

30. Notices.

Any notice or communication required hereunder shall be in writing and shall be: (a) delivered in person at the address set forth below; (b) sent by United States mail (certified with return receipt requested) or overnight courier and addressed to the intended recipient at the address set forth below; or (c) sent by facsimile at the telephone number set forth below if receipt is immediately confirmed by telephone and then promptly confirmed in writing:

If to Green Mountain: Attention: John T. Savage
Senior Vice President, Marketing
Green Mountain Energy Company
3815 Capital of Texas Hwy. South -- Suite 100
Austin, TX 78704
Telephone: 512-691-6100
Facsimile: 512-691-6151

with copy to: Attention: Robert P. Thomas
Chief Legal Officer
Green Mountain Energy Company
3815 Capital of Texas Hwy. South -- Suite 100
Austin, TX 78704
Facsimile: 512-691-6353

If to FPL: Attention: Dennis Brandt
Director, Product Development and Management
Florida Power & Light Company
9250 West Flagler Street
Miami, FL 33174
Telephone: 305-552-3833
Facsimile: 305-552-2487

with copy to: FPL Legal Department, Attention: R. Wade Litchfield
Florida Power & Light Company
9250 West Flagler Street
Miami, FL 33174
Facsimile: 305-552-2487

The Parties may change the person to whom notices are addressed, or their addresses, by providing notice thereof as specified in this Section 30. Notice shall be effective upon delivery.

31. Miscellaneous.

31.1 Entire Agreement. This Agreement states the entire agreement of the Parties with respect to the subject matter hereof. It supersedes all prior or contemporaneous proposals, agreements and other communications between the Parties, oral or written, regarding such subject matter. Unless

specifically set forth herein, neither Party makes any representation or warranty whatsoever, express or implied, to the other Party and hereby disclaims any such purported representation or warranty. All Schedules and Exhibits attached hereto are incorporated herein by reference.

31.2 Counterparts. This Agreement may be executed in counterparts, each of which taken together shall constitute a single agreement. Facsimile signatures shall have the same effect as original signatures.

31.3 Headings. Each heading used in this Agreement has been inserted for convenience only, and shall not be construed to limit, add to or otherwise affect the interpretation of the provision in which it appears.

31.4 Attorneys Fees and Costs. If either Party commences a suit or other proceeding to enforce this Agreement, the prevailing Party shall be entitled to recover its reasonable attorneys fees and costs incurred therein or on account thereof (including those at trial or on appeal).

31.5 Time is of the Essence. Time is of the essence of each and every obligation set forth in this Agreement.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, the Parties have executed this Trademark License and Services Agreement as of the date set forth above.

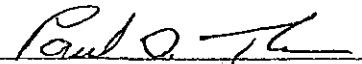
Florida Power & Light Company

By: 

Name: W.W. HAMILTON

Title: VICE PRESIDENT, CUSTOMER SERVICE

Green Mountain Energy Company

By: 

Name: PAUL O THOMAS

Title: CEO and President

**SCHEDULE I
TO
TRADEMARK LICENSE AND
SERVICES AGREEMENT**

GREEN MOUNTAIN TRADEMARKS AND LOGOS

The following marks shall be the "GM Licensed Marks":

[None]

**SCHEDULE II
TO
TRADEMARK LICENSE AND
SERVICES AGREEMENT**

FPL TRADEMARKS AND LOGOS

The following marks shall be the "FPL Licensed Marks":

Sunshine Energy®

EXHIBIT B

March 24, 2008 Request

DOCUMENT NUMBER-DATE
05634 JUN 30 8
FPSC-COMMISSION CLERK

1 Q.

2 Please refer to Section 15.3 of FPL's contract with Green Mountain. Discuss any obligation
3 Green Mountain has to purchase solar green tags from FPL. To date, has Green Mountain
4 purchased any green tags (solar or wind) from FPL or its affiliates? If so, were these green tags
5 used to meet Green Mountain's obligation under the Sunshine Energy program?

6 A.

7 Section 15.3 provides that if FPL or certain companies affiliated with FPL build solar generation
8 facilities in FPL's Licensed Territory, Green Mountain will, to the extent necessary to supply to
9 FPL the amount of Green Tags required under the Agreement and to the extent commercially
10 reasonable, purchase Green Tags from such facilities at a price not to exceed [REDACTED] In 2007,
Green Mountain purchased wind TRECs for the Sunshine Energy Program generated by one
facility in Texas owned by an affiliate of FPL. The transaction for this purchase was conducted
through a third party broker. Green Mountain committed to the purchase through the broker
before knowing the FPL affiliate would be the supplier. As a general rule, Green Mountain does
not purchase TRECs directly from FPL Energy or from FPL Energy facilities.

Q.

Please refer to definition 1.56 in FPL's contract with Green Mountain. Is Green Mountain required to provide financial support to a solar project in order to meet this standard? If so, how does FPL determine that this solar financial support is sufficient to meet the standard in definition 1.56? How does FPL ensure that these solar resources would not have otherwise been built in the absence of Green Mountain's efforts and/or financial support?

A.

Section 1.56 sets forth a definition which is used in the Agreement. Section 1.56 defines "Solar Resource Project" as meaning a Solar Resource that Green Mountain causes to be constructed in accordance with the terms of Section 18.

Green Mountain proposes new solar projects for FPL's review. As part of this review, Green Mountain outlines how the involvement of Sunshine Energy will cause the project to happen. Thus far, all projects agreed to by FPL have had Green Mountain provide financial assistance. FPL uses its experience with similar type activities in determining if the proposed project meets the definition of Section 1.56.

EXHIBIT B

June 19, 2008 Request
(work paper 5-7, pgs. 10-11)

DOCUMENT NUMBER-DATE

05634 JUN 30 8

FPSC-COMMISSION CLERK

CONFIDENTIAL

Florida Power & Light Company
Docket No. 070626-EI
Staff's Data Request 2-15-08
Interrogatory No. 43
Page 1 of 1

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11 Green Mountain purchased wind TRECs for the Sunshine Energy Program generated by one
12 facility in Texas owned by an affiliate of FPL. The transaction for this purchase was conducted
13 through a third party broker. Green Mountain committed to the purchase through the broker
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5-7

P.10

1a p 25

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12 Mountain outlines how the involvement of Sunshine Energy will cause the project to happen.
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14 FPL uses its experience with similar type activities in determining if the proposed project meets
15 the definition of Section 1.56.

5-7

P.11

1 u p 26