

090537-EQ REDACTED

Exhibit B

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DOCUMENT NUMBER-DATE

11877 DEC 11 8

FPSC-COMMISSION CLERK

EXHIBIT A

THE BG&E AMENDED CONTRACT

(REDACTED)

DOCUMENT NUMBER - DATE

11877 DEC 11 8

FPSC-COMMISSION CLERK

“Electrical Interconnection and Operating Agreement” – means the separate contract(s) between Seller and a Transmission Provider for interconnection of the Facility and, if necessary, transmission of Energy from the Electric Interconnection Point to the Delivery Point.

“Eligible Collateral” – means (i) a Letter of Credit from a Qualified Institution or (ii) cash deposited into a Seller Security Account by Seller for the benefit of Buyer or a combination of (i) and/or (ii) in an aggregate amount required by Section 10.1.

“Emission Reduction Credits” means any offset, allowance, or credit of any kind created or administered under any current or future statutory and/or regulatory regime, under which the generation of units of electric energy using a renewable fuel source is recognized as preventing the emission of nitrogen oxide (NOx), sulfur dioxide (SO2), or other “greenhouse gas,” by displacing the production of units of electric energy using fossil fuels. [REDACTED]

“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” – see Section 4.2. (b).

“Environmental Law(s)” – all Applicable Laws relating to pollution, protection, preservation or restoration of human health, the environment or natural resources, including laws relating to releases or threatened releases of hazardous substances or hazardous waste, or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of hazardous substances or hazardous waste, including the Clean Water Act, the Clean Air Act, the Resource Conservation and Recovery Act, and the Comprehensive Environmental Response Compensation and Liability Act, in each case as amended, and their state and local counterparts and all regulations thereunder.

“Event of Default” – see Section 11.1.

“Facility” – means, collectively, Seller’s biomass-fueled electric generating facility located on the Site and Seller’s interconnection equipment for such Facility, the purpose of which is to produce electricity from gasified biomass feedstock and deliver such electricity to the Delivery Point, including all of the following: Seller’s equipment, buildings, turbines, generators, step-up transformers, output breakers, facilities necessary to connect to the Delivery Point, protective and associated equipment, improvements, Fuel stock, gasifier, and all other tangible assets, contract rights, real property, easements, rights of way, surface use agreements and other interests or rights in real estate reasonably necessary for the construction, operation (including purchase of and transportation for Fuel), and maintenance of the electric generating facility that produces the Energy that is the subject of this Agreement.

- 1.2 Interpretation. The headings of Articles and Sections in this Agreement are provided for convenience only and will not affect the construction or interpretation of this Agreement. All references to “Articles,” “Sections,” “Schedules” or “Exhibits” refer to the corresponding Articles, Sections, Schedules or Exhibits of or to this Agreement. All Schedules and Exhibits to this Agreement are hereby incorporated by reference. All words used in this Agreement will be construed to be of such gender or number as the circumstances require. Unless otherwise expressly provided, the word “including” does not limit the preceding words or terms. Unless otherwise stated, any reference in this Agreement to any person shall include its permitted successors and assigns and, in the case of any Governmental Authority, any person succeeding to its functions and capacities.
- 1.3 Construction. In the event of a conflict between the terms of this Agreement and those of any Exhibit or Schedule, the terms of the Agreement shall prevail. Each Party acknowledges that it and its counsel have reviewed and revised this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting Party shall not be employed in the interpretation of this Agreement.

Article 2
Term and Conditions Precedent

- 2.1 Effective Date. This Agreement will become effective upon the date of its execution and delivery by each of the Parties.
- 2.2 Term. This Agreement will continue in effect until the 20th anniversary of the Commercial Operation Date, subject to earlier termination pursuant to Sections 2.3.1, 2.6(iii), 11.1, 11.4, 12.5.4, or 15.2 (the period from the Commercial Operation Date until such time, the “**Term**”).
- 2.3 Conditions Precedent.
- 2.3.1 Conditions Precedent. Either Party may terminate this Agreement effective upon written notice to that effect, and neither Party will have any further obligation to the other Party, except as provided in Section 2.4, if any of the following events by the other Party has not occurred by [REDACTED] following the Effective Date:
- (a) Seller has executed an agreement for the ownership or lease of a Site that is acceptable to Seller in its sole discretion. In the event Seller leases a Site then the term of the lease shall be not less than the Term stated in Section 2.2;
 - (b) Seller shall have obtained such firm transmission service, on terms acceptable to Seller in its sole discretion, as may be necessary to deliver Capacity and Energy from the Facility to the Electrical Interconnection Point;

- 3.3.5 Payment for Test Energy. If the Facility is in Buyer's control area, Buyer will purchase and receive all Net Electric Energy generated during initial testing at a price per MWh equal to Buyer's As-Available Rate. If the Facility is not in Buyer's control area, Buyer can purchase and receive all Net Electric Energy generated during initial testing at a per MWh equal to Buyer's As-Available Rate if it so chooses. If in such event Buyer does not choose to purchase all Net Electric Energy generated during initial testing, then Seller shall be free to sell such Energy at its discretion.
- 3.3.6 Additional Tests. Buyer shall have the right to require that Seller, not more than once in any twelve (12) Month period beginning with the Commercial Operation Date, perform a Targeted Capacity Test of the Facility within sixty (60) days of the demand; provided, however, that such demand shall be coordinated with Seller so that sixty (60) day period avoids previously notified periods of a Planned Outage, Maintenance Outage or Mutually-Agreed Outage. Seller, at its option, may, upon at least 10 days' notice to Buyer, conduct Targeted Capacity Tests from time to time.
- 3.3.7 Failure to Test at Minimum Targeted Capacity. If any Targeted Capacity Test conducted in accordance with Section 3.3.6 reflects a Capacity below 40.5 MW, Seller shall have 60 days to address the cause of the Facility's failure to test at the Targeted Capacity level, and on or before the 60th day, Seller shall provide Buyer with a reasonable cure plan describing the cause of the deficiency and setting forth a plan and timetable for curing the deficiency within a period not to exceed twelve (12) months. During this diagnostic and cure period, Seller shall, at its sole expense, have the right to schedule and conduct (within commercially reasonable scheduling limitations) such additional Targeted Capacity Tests as are necessary to demonstrate that any deficiency in attaining the Targeted Capacity has been cured.

Article 4

Purchase and Sale of Net Electric Energy and Associated Attributes

- 4.1 Purchase and Sale of Net Electric Energy. Seller will deliver and sell to Buyer and Buyer will purchase and receive all Net Electric Energy.
- 4.2 Environmental Credits.
- (a) The Parties understand and agree that the Facility is a "renewable" electricity generation source under applicable state and federal laws and regulations in effect as of the Effective Date.
- (b) 

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Article 5
Delivery Point; Delivery

- 5.1 Delivery Point. The physical point for the delivery by Seller to Buyer of Net Electric Energy shall be determined as either the Electrical Interconnection Point or, if Seller interconnects with a Transmission System other than Buyer's, Buyer's interconnection with the Transmission Provider's Transmission System, or such other physical point on which Seller and Buyer agree ("**Delivery Point**").
- 5.2 Title. Title to and risk of loss of Net Electric Energy shall pass from Seller to Buyer at the Delivery Point.
- 5.3 Responsibility. Seller shall be responsible for delivery of Net Electric Energy to the Delivery Point and, as between the Parties, shall be responsible for all costs, liabilities, Taxes, losses, and charges of any kind imposed or assessed with respect to the delivery of

of the last previous test of the Meters, provided that the period subject to adjustment will not exceed six months. In no case shall an adjustment to previous billings be corrected more than two (2) years from the date that the Net Electric Energy was received by Buyer.

Article 8 Charges And Payments

8.1 Project Energy Payment. Beginning on the Commercial Operation Date, Buyer shall pay Seller, \$ [REDACTED] for each MWh of Net Electric Energy delivered to the Delivery Point (“Project Energy Payment”).

8.1.1 Project Energy Payment Escalation. Beginning on January 1, 2013 and continuing each year after, the Project Energy Payment shall be increased by [REDACTED] over the proceeding year amount.

8.1.2 Project Energy Payment Adjustment. Beginning on the Commercial Operation Date, the Annual Billing Factor will be calculated monthly. In the event that the Annual Billing Factor in any month is less than [REDACTED], the Project Energy Payment for such month shall be reduced by [REDACTED].

The Annual Billing Factor for each Monthly Billing Period shall equal the ratio, expressed as a percentage, of the total Net Electric Energy delivered during the On-Peak Hours for the twelve most recently completed Monthly Billing Periods divided by the sum of the products of the Capacity multiplied by the total On-Peak Hours for each of the twelve most recently completed Monthly Billing Periods. Periods during a Force Majeure Event shall be excluded from calculations of the Annual Billing Factor. For each of the first 11 Monthly Billing Periods after the Commercial Operation Date, the Annual Billing Factor shall be computed based on the Net Electric Energy delivered, On-Peak Hours and Capacity for the then most recently completed Monthly Billing Periods. The Capacity utilized in calculating each Net Electric Energy Payment Adjustment shall be the Capacity reflected in the then most recently completed Targeted Capacity Test.

8.2 Statements and Payment.

8.2.1 Invoices. By the tenth day of each month following a month in which Net Electric Energy was delivered, Seller shall provide Buyer with an invoice setting forth the quantity of Net Electric Energy that was delivered, the price established for such Net Electric Energy and the total Net Electric Energy Payment due from Buyer. Buyer shall remit the amount due by wire transfer, pursuant to Seller’s invoice instructions, on or before twenty Business Days after Buyer’s receipt of Seller’s invoice.

8.2.2 Interest. If Buyer fails to pay any amount payable under this Agreement when due, then Buyer also will pay interest at the Specified Rate on the amount that is

- 9.7 Records. Seller will during the Term of this Agreement maintain appropriate books and records with respect to the operation and maintenance of the Facility consistent with Prudent Industry Practice and Applicable Law. Subject to the confidentiality requirements of Section 16.2, Seller will make such books and records available to Buyer for inspection and copying as Buyer may reasonably request to verify the accuracy of any statement, charge or computation made pursuant to this Agreement.
- 9.8 Reports. Subject to the confidentiality requirements of Section 16.2, each of the Parties will provide to the other Party all information that such other Party shall reasonably request in connection with the performance of this Agreement, including all relevant technical information required for the purchase and sale and delivery and acceptance of Net Electric Energy. Such reports shall include, but not be limited to, monthly construction reports beginning the first month after the Construction Contract is awarded.
- 9.9 Qualified Personnel. Seller will employ or contract with qualified personnel for the purpose of operating and maintaining the Facility.
- 9.10 Inspection. Buyer will have the right reasonably to inspect the Facility, upon reasonable prior notice to Seller, during normal business hours and subject to the safety rules and regulations of Seller. Neither any inspections by Buyer, nor any testing monitored by Buyer, shall relieve Seller of its obligation to maintain the Facility. In no event shall any Buyer statement, representation, or lack thereof, either express or implied, relieve Seller of its exclusive responsibility for the Facility. Any Buyer inspection of property or equipment owned or controlled by Seller shall not be construed as endorsing the design, fitness or operation of the Facility equipment nor as a warranty or guarantee.
- 9.11 Insurance. Seller shall carry and maintain no less than the insurance coverages described in the following sentence, applicable to all operations undertaken by Seller, in the minimum amounts indicated in the following sentence, and all such liability insurance shall name Buyer as an additional insured. The minimum required insurance coverages are: Commercial General Liability insurance written on an occurrence basis, with a minimum limit of [REDACTED] and a combined single limit of [REDACTED], and All Risk Property insurance covering the Facility against physical loss or damage, with a minimum limit sufficient to cover replacement of the Facility. Such minimum amounts may be satisfied either by primary insurance or by any combination of primary and excess/umbrella insurance. All such insurance is to be placed with Florida-admitted insurers rated B+ or better by A.M. Best Rating Service. The required insurance coverages shall be maintained in effect throughout the Term.

Seller shall cause its insurers or agents to provide Buyer with certificates of insurance evidencing the policies and endorsements required by this Section 9.11.

If Seller is unable to obtain the insurance coverage required by this Section 9.11, it shall promptly notify Buyer.

9.13 Fuel Availability and Cover Damages. During the Term of this Agreement, Seller shall maintain sufficient Fuel, [REDACTED]

[REDACTED]. At Buyer's request from time to time, Seller shall demonstrate this capability to Buyer's reasonable satisfaction. If Seller determines that the supply of Fuel on the Site [REDACTED]

[REDACTED] without cure, then upon making such determination, Seller shall promptly notify Buyer of the deficiency, shall provide Buyer with a plan to cure the deficiency without disruption to the Facility's normal operations, and (if not already commenced) shall promptly commence Commercially Reasonable Efforts to implement such plan.

Notwithstanding the foregoing, if at any time during the Term of this Agreement the quantity of Fuel at the Site falls below that necessary to deliver the Energy associated with the Capacity for an uninterrupted [REDACTED], then for each day that the quantity of Fuel at the Site remains below such [REDACTED], Seller shall pay Buyer a replacement contingency fee of the greater of [REDACTED] per day or [REDACTED]

[REDACTED]. Seller shall not be obligated to make any such payments to the extent that any such shortage of Fuel at the Site is due to Force Majeure. At Buyer's request from time to time, Seller shall demonstrate the presence of such [REDACTED] Fuel supply at the Site to Buyer's reasonable satisfaction.

9.14 Seller Notification of Energy Estimate. By 8:00 a.m. Eastern Prevailing Time on each Business Day, Seller shall submit a good faith estimate of the quantity of Net Electric Energy to be supplied to Buyer for the next three (3) subsequent Business Days, including any days during that period that are not Business Days.

If, at any time following submission of a good faith estimate to Buyer on the Business Day preceding the next subsequent Business Day, Seller becomes aware of any change to any of the values contained in the good faith estimate or predicts that such values will be subject to change before the end of the next subsequent Business Day, then Seller shall promptly notify Buyer of such change or predicted change. Notwithstanding the foregoing, Seller shall have no liability to Buyer beyond Seller's obligation in this Agreement for any deviations between actual delivery of Net Electric Energy and any such Energy estimate or update thereto submitted to Buyer.

**Article 10
Security for Performance**

10.1 Seller Performance Security: On or before the date that Seller gives Buyer written notice that the Conditions Precedent in Section 2.3.1 are satisfied, Seller shall establish, fund, deliver to Buyer and maintain until the fifth anniversary of the Commercial Operation Date performance security in the form of Eligible Collateral ("Seller Performance Security") in an amount equal to [REDACTED]. From and after the fifth anniversary of the

Commercial Operation Date, Seller shall maintain throughout the remainder of the Term Seller Performance Security in an amount equal to [REDACTED]. In the event that a Material Adverse Change occurs in respect of Seller, then within two (2) Business Day(s) Seller shall deliver to Buyer additional Eligible Collateral equal to 50 percent of the then current Seller Performance Security amount; provided however, that in Buyer's sole discretion, based on a review of the overall circumstances of Seller's Material Adverse Change, Buyer may reduce the amount of additional Eligible Collateral required but in no event shall the amount be less than the amount required previous to the Material Adverse Change. Thereafter, if at any time Seller provides to Buyer reasonably detailed evidence demonstrating that Seller's financial condition has recovered to at least a level of creditworthiness as existed prior to the Material Adverse Change, then upon Buyer's approval, which shall not be unreasonably withheld, Buyer shall return to Seller any additional Eligible Collateral provided by Seller.

- 10.2 Replacement Collateral, Release of Collateral: Buyer shall upon two (2) Business Days written request by Seller after the Commercial Operation Date release the portion of the Eligible Collateral that is no longer required as provided in Section 10.1. Seller may periodically change the type(s) of Eligible Collateral by which it satisfies its obligations under Section 10.1, and upon receipt of substitute Eligible Collateral, Buyer shall promptly release the Eligible Collateral for which the substitution is being made. Following any termination of this Agreement, the Parties shall mutually agree to a final settlement of all obligations under this Agreement within 90 days of the date of termination, unless extended by mutual agreement of the Parties. After such settlement, any remaining Eligible Collateral that Buyer has not drawn upon shall be returned to Seller. Any Dispute between the Parties regarding such final settlement shall be resolved according to applicable procedures set forth in Section 16.13.
- 10.3 Draws and Replenishment: Buyer may draw upon Eligible Collateral provided by Seller following the occurrence of an Event of Default by Seller, or as otherwise provided in this Agreement, to recover any damages to which Buyer is entitled under this Agreement. In the event of any draw of amounts from Seller Performance Security permitted under this Agreement, except in the circumstance when this Agreement otherwise terminates, Seller shall within two (2) Business Days replenish the Eligible Collateral to the full amount required by Section 10.1.
- 10.4 Reporting: Seller shall promptly notify Buyer of any circumstance that results in Seller's failure to be in compliance with Seller Performance Security requirements of Article 10. From time to time, at Buyer's written request, Seller shall provide Buyer with such evidence as Buyer may reasonably request that Seller and any Seller Letter of Credit or Seller Security Account is in full compliance with this Agreement.

Article 11
Events of Default and Remedies

- 11.1 Termination Due to Event of Default. If an event specified in Section 11.2 (an “**Event of Default**”) occurs with respect to either Seller or Buyer, then the non-defaulting Party may terminate this Agreement immediately upon written notice to the defaulting Party. The terminating Party will be entitled to all available remedies at law or in equity, except as expressly limited by this Agreement (including Section 14.3).
- 11.2 Events of Default. The occurrence of any of the following events shall constitute an Event of Default:
- 11.2.1 Payment Default. With respect to a Party, if a Party fails to make, when due, any payment required under this Agreement, and that failure is not remedied on or before fifteen (15) days after a Party notifies the other Party of the failure, unless payment is the subject of a good-faith Dispute as described in Section 16.13.1.
- 11.2.2 Inability to Deliver. With respect to Seller, failure to maintain the capability of the Facility to provide at least [REDACTED] of its Capacity and associated Net Electric Energy as established in accordance with Section 3.3 for 60 consecutive days (except in cases of Planned Outages, Mutually Agreed Outages, or Force Majeure), if Seller does not commence a cure for such failure within 30 days after notice from Buyer.
- 11.2.3 Misrepresentation. With respect to a Party, if any representation or warranty made by the Party in this Agreement proves to have been false or misleading in any material respect when made, unless such Party cures or otherwise completes arrangements to hold the other Party harmless from the adverse effect of such misrepresentation within 60 days after notice thereof.
- 11.2.4 Default. With respect to a Party, if the Party fails to perform any covenant set forth in this Agreement (other than obligations that are otherwise specifically covered in this Section 11.2), which is not cured within 60 days after the other Party notifies the Party of the failure; provided that if such failure cannot be cured with due diligence within such 60-day period and the Party has commenced and is diligently continuing to attempt to effect a cure, the Event of Default shall not be deemed to occur until the expiration of such longer period, not to exceed an additional 60 days, as reasonably necessary diligently to complete such cure.
- 11.2.5 Bankruptcy and Insolvency. With respect to a Party, if the Party:
- (a) is dissolved (other than pursuant to a consolidation, amalgamation or merger);
 - (b) 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;

- (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 (1) 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 (2) is not dismissed, discharged, stayed or restrained in each case within 30 days of the institution or presentation thereof;
- (d) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger);
- (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 its assets;
- (f) 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;
- (g) causes or is subject to any event with respect to it, which, under the Applicable Laws of any jurisdiction, has an analogous effect to any of the events specified in clauses (a) through (f) (inclusive); or
- (h) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts.

11.2.6 Seller materially changes or modifies the Facility from that provided in Recital (A) with respect to its technology or Fuel, without the prior written consent of Buyer.

11.2.7 Seller fails to fulfill its obligations pertaining to Fuel Availability under Section 9.13.

11.2.8 Seller fails to provide the security and to comply with any of the provisions of Article 10.

11.2.9 Seller fails to maintain an Annual Billing Factor of [REDACTED] for 12 consecutive months or more.

- 11.3 Delay Damages. If the Commercial Operation Date does not occur within ninety (90) days after the Stipulated Commercial Operation Date, subject to extension for Force Majeure, Seller shall pay Buyer damages (“**Delay Damages**”) in an amount of [REDACTED] per day for each subsequent day until the Commercial Operation Date is achieved, unless this Agreement is sooner terminated pursuant to Section 11.4. Except as provided in Section 11.4, such Delay Damages shall be Buyer’s sole and exclusive remedy for Seller’s failure to achieve the Commercial Operation Date.
- 11.4 Termination Due to Delay. If the Commercial Operation Date does not occur within 180 days after the Stipulated Commercial Operation Date, subject to extension for Force Majeure, Buyer shall have the right to terminate this Agreement upon fifteen (15) days notice to Seller. Upon termination of this Agreement pursuant to this Section 11.4, Buyer shall be entitled to receive from Seller damages in the amount of [REDACTED] less the amount of Delay Damages paid to Buyer pursuant to Section 11.3. Such right to terminate and receive damages shall be Buyer’s sole and exclusive remedy for Seller’s failure to so achieve the Commercial Operation Date.

Article 12
Taxes/Change in Law

- 12.1 Responsibility. Seller will be responsible for all Taxes imposed or levied relating to the ownership or operation of the Facility. Buyer will be responsible for all Taxes imposed upon the purchase of Net Electric Energy from the Facility (including any applicable sales or use or similar Tax). If either Party is required to collect or remit any Tax on behalf of the other Party, the obligated Party will reimburse the paying Party for such Taxes.
- 12.2 Tax Reporting. Each of the Parties will be responsible for its own Tax reporting. For purposes of Tax reporting, the Parties will treat the transactions described in this Agreement in a manner consistent with the characterizations of such transactions in this Agreement.
- 12.3 Exemption. A Party, on notice from the other, shall provide a certificate of exemption or other reasonably satisfactory evidence of exemption if either Party is exempt from Taxes, and shall use Commercially Reasonable Efforts to obtain, and cooperate with the other Party obtaining, any exemption from or reduction of Tax.
- 12.4 Income and Other Taxes. Each Party shall be responsible for its own liabilities for any other Taxes, including income taxes, attributable to amounts paid to it under this Agreement.
- 12.5 Change in Law.
- 12.5.1 As used herein, “Change(s) in Law(s)” means: after the Effective Date, the adoption, enactment, imposition, promulgation, implementation, issuance, or modification by a Governmental Authority of any Applicable Law, or the issuance of an order, judgment, award or decree of a Governmental Authority

having the effect of the foregoing, including, but not limited to, the imposition on a Party by any Governmental Authority of any requirement with respect to compliance with the Clean Air Interstate Rule promulgated on May 12, 2005 (70 Fed. Reg. 25,162) or the Clean Air Mercury Rule promulgated on May 18, 2005 (70 Fed. Reg. 28,606) and any re-promulgation or re-issuance of such rules in response to a petition for reconsideration or litigation challenging such rules, regardless of the date on which such requirements are imposed.

- 12.5.2 The Parties acknowledge that Change(s) in Law(s), including, but not limited to Environmental Laws(s) could significantly increase the costs of complying with the terms of this Agreement (“Increased Costs”) and agree that, if any Change(s) in Law(s) should increase(s) a Party’s cost of performing its obligations under this Agreement above the threshold defined in Section 12.5.3 below, the Party affected by such Change(s) in Law(s) may avail itself of the remedies set forth in Section 12.5.4 below as its sole and exclusive remedies for such Change(s) in Law(s).
- 12.5.3 The Parties recognize and agree that certain Change(s) in Law(s) may occur that do not rise to a level that the Parties desire to impact this Agreement. Accordingly, the Parties agree that for the purposes of this Agreement, Change(s) in Law(s) will not be deemed to have occurred unless the Increased Costs resulting from such Change(s) in Law(s) exceed ██████████ in the aggregate during the Term.
- 12.5.4 If a Party’s Increased Costs should meet the threshold requirements set forth in Section 12.5.3 above, and the non-affected Party does not agree, in its sole discretion, to compensate the affected Party for such Increased Costs, then the affected Party may terminate this Agreement upon not less than one hundred and eighty (180) Days written notice to the other Party in the manner provided for in Section 16.1. Notwithstanding the foregoing, Buyer agrees, if legally possible, to seek reimbursement for any such Increased Costs through any applicable cost recovery clause or comparable non-base rate recovery mechanism prior to invoking the termination provision in this Section 12.5.4. In the event that Buyer is not permitted to recover any such Increased Costs through any such clause by the Florida Public Service Commission, then Buyer shall have the right to immediately terminate this Agreement upon the issuance of a final order of the Commission in such matter.

Article 13 Representations and Warranties

obligations for the duration of the Force Majeure. Force Majeure shall not excuse the obligation to pay amounts due or owing under this Agreement. The Claiming Party shall remedy the Force Majeure with all reasonable dispatch and shall notify the non-Claiming Party as soon as practicable of the termination of such Force Majeure event. To the extent Buyer is unable to accept delivery of Net Electric Energy as provided under this Agreement due to Force Majeure, this Agreement will not be construed to prohibit Seller from selling Net Electric Energy to third parties during the continuance of such Force Majeure; provided, that nothing in this Agreement will obligate Buyer to transmit such Net Electric Energy to any third party. Seller shall reactivate the Facility at its own expense if the Facility is rendered inoperable due to actions of Seller or its agents or a Force Majeure Event.

- 15.2 Termination for Extended Force Majeure. In the event that a Force Majeure continues for more than three (3) consecutive calendar months, then, during the next three (3) consecutive months, so long as the Claiming Party is exercising due diligence to remedy the Force Majeure this Agreement shall remain in full force and effect. If at the end of such three (3) month period, the Parties agree that the cause of such Force Majeure can reasonably be expected to be remedied through the exercise of due diligence within six (6) additional months, the Claiming Party shall have an additional six (6) months to remedy such Force Majeure; provided that, if the parties are unable to agree, the matter shall be referred to an independent, neutral arbiter selected jointly by the parties to determine whether there is a reasonable probability that the effects of the Force Majeure condition can be remedied within six (6) additional months through the exercise of reasonable diligence. If the arbiter so determines, he shall have sole authority to grant the Claiming Party an additional cure period of up to six months from the expiration of the preceding cure period. If at the conclusion of the additional six-month cure period, the Force Majeure has not been remedied, the non-Claiming Party may terminate this Agreement upon notice to the Claiming Party.

15.2.1 Termination by Claiming Party. If the Claiming Party determines that curing the effects of a Force Majeure event will cost the Claiming Party in excess of [REDACTED] in out-of-pocket costs, then the Claiming Party, upon demonstration to the non-Claiming Party's reasonable satisfaction of the anticipated cost of the cure, shall be entitled to terminate the Agreement.

THE BG&E AMENDED CONTRACT

(RED-LINE VERSION)

(REDACTED)

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“Facility” – means, collectively, Seller’s biomass-fueled electric generating facility located on the Site and Seller’s interconnection equipment for such Facility, the purpose of which is to produce electricity from gasified biomass feedstock and deliver such electricity to the Delivery Point, including all of the following: Seller’s equipment, buildings, turbines, generators, step-up transformers, output breakers, facilities necessary to connect to the Delivery Point, protective and associated equipment, improvements, Fuel stock, gasifier, and all other tangible assets, contract rights, real property, easements, rights of way, surface use agreements and other interests or rights in real estate reasonably necessary for the construction, operation (including purchase of and transportation for Fuel), and maintenance of the electric generating facility that produces the Energy that is the subject of this Agreement.

- 1.2 Interpretation. The headings of Articles and Sections in this Agreement are provided for convenience only and will not affect the construction or interpretation of this Agreement. All references to “Articles,” “Sections,” “Schedules” or “Exhibits” refer to the corresponding Articles, Sections, Schedules or Exhibits of or to this Agreement. All Schedules and Exhibits to this Agreement are hereby incorporated by reference. All words used in this Agreement will be construed to be of such gender or number as the circumstances require. Unless otherwise expressly provided, the word “including” does not limit the preceding words or terms. Unless otherwise stated, any reference in this Agreement to any person shall include its permitted successors and assigns and, in the case of any Governmental Authority, any person succeeding to its functions and capacities.
- 1.3 Construction. In the event of a conflict between the terms of this Agreement and those of any Exhibit or Schedule, the terms of the Agreement shall prevail. Each Party acknowledges that it and its counsel have reviewed and revised this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting Party shall not be employed in the interpretation of this Agreement.

Article 2
Term and Conditions Precedent

- 2.1 Effective Date. This Agreement will become effective upon the date of its execution and delivery by each of the Parties.
- 2.2 Term. This Agreement will continue in effect until the 20th anniversary of the Commercial Operation Date, subject to earlier termination pursuant to Sections 2.3.1, 2.6(iii), 11.1, 11.4, 12.5.4, or 15.2 (the period from the Commercial Operation Date until such time, the “**Term**”).
- 2.3 Conditions Precedent.
- 2.3.1 Conditions Precedent. Either Party may terminate this Agreement effective upon written notice to that effect, and neither Party will have any further obligation to the other Party, except as provided in Section 2.4, if any of the following events by the other Party has not occurred by [REDACTED] following the Effective Date:
- (a) Seller has executed an agreement for the ownership or lease of a Site that is acceptable to Seller in its sole discretion. In the event Seller leases a Site then the term of the lease shall be not less than the Term stated in Section 2.2;
 - (b) Seller shall have obtained such firm transmission service, on terms acceptable to Seller in its sole discretion, as may be necessary to deliver Capacity and Energy from the Facility to the Electrical Interconnection Point;

- 3.3.5 Payment for Test Energy. If the Facility is in Buyer's control area, Buyer will purchase and receive all Net Electric Energy generated during initial testing at a price per MWh equal to Buyer's As-Available Rate. If the Facility is not in Buyer's control area, Buyer can purchase and receive all Net Electric Energy generated during initial testing at a per MWh equal to Buyer's As-Available Rate if it so chooses. If in such event Buyer does not choose to purchase all Net Electric Energy generated during initial testing, then Seller shall be free to sell such Energy at its discretion.
- 3.3.6 Additional Tests. Buyer shall have the right to require that Seller, not more than once in any twelve (12) Month period beginning with the Commercial Operation Date, perform a Targeted Capacity Test of the Facility within sixty (60) days of the demand; provided, however, that such demand shall be coordinated with Seller so that sixty (60) day period avoids previously notified periods of a Planned Outage, Maintenance Outage or Mutually-Agreed Outage. Seller, at its option, may, upon at least 10 days' notice to Buyer, conduct Targeted Capacity Tests from time to time.
- 3.3.7 Failure to Test at Minimum Targeted Capacity. If any Targeted Capacity Test conducted in accordance with Section 3.3.6 reflects a Capacity below 6740.5 MW, Seller shall have 60 days to address the cause of the Facility's failure to test at the Targeted Capacity level, and on or before the 60th day, Seller shall provide Buyer with a reasonable cure plan describing the cause of the deficiency and setting forth a plan and timetable for curing the deficiency within a period not to exceed twelve (12) months. During this diagnostic and cure period, Seller shall, at its sole expense, have the right to schedule and conduct (within commercially reasonable scheduling limitations) such additional Targeted Capacity Tests as are necessary to demonstrate that any deficiency in attaining the Targeted Capacity has been cured.

Article 4

Purchase and Sale of Net Electric Energy and Associated Attributes

- 4.1 Purchase and Sale of Net Electric Energy. Seller will deliver and sell to Buyer and Buyer will purchase and receive all Net Electric Energy.
- 4.2 Environmental Credits.
- (a) The Parties understand and agree that the Facility is a "renewable" electricity generation source under applicable state and federal laws and regulations in effect as of the Effective Date.
- (b) 

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Article 5
Delivery Point; Delivery

- 5.1 Delivery Point. The physical point for the delivery by Seller to Buyer of Net Electric Energy shall be determined as either the Electrical Interconnection Point or, if Seller interconnects with a Transmission System other than Buyer's, Buyer's interconnection with the Transmission Provider's Transmission System, or such other physical point on which Seller and Buyer agree ("**Delivery Point**").
- 5.2 Title. Title to and risk of loss of Net Electric Energy shall pass from Seller to Buyer at the Delivery Point.
- 5.3 Responsibility. Seller shall be responsible for delivery of Net Electric Energy to the Delivery Point and, as between the Parties, shall be responsible for all costs, liabilities, Taxes, losses, and charges of any kind imposed or assessed with respect to the delivery of

of the last previous test of the Meters, provided that the period subject to adjustment will not exceed six months. In no case shall an adjustment to previous billings be corrected more than two (2) years from the date that the Net Electric Energy was received by Buyer.

**Article 8
Charges And Payments**

8.1 Project Energy Payment. Beginning on the Commercial Operation Date, Buyer shall pay Seller, \$[REDACTED] for each MWh of Net Electric Energy delivered to the Delivery Point (“**Project Energy Payment**”).

8.1.1 Project Energy Payment Escalation. Beginning on January 1, ~~2012~~2013 and continuing each year after, the Project Energy Payment shall be increased by [REDACTED] over the proceeding year amount.

8.1.2 Project Energy Payment Adjustment. Beginning on the Commercial Operation Date, the Annual Billing Factor will be calculated monthly. In the event that the Annual Billing Factor in any month is less than [REDACTED], the Project Energy Payment for such month shall be reduced by [REDACTED].

The Annual Billing Factor for each Monthly Billing Period shall equal the ratio, expressed as a percentage, of the total Net Electric Energy delivered during the On-Peak Hours for the twelve most recently completed Monthly Billing Periods divided by the sum of the products of the Capacity multiplied by the total On-Peak Hours for each of the twelve most recently completed Monthly Billing Periods. Periods during a Force Majeure Event shall be excluded from calculations of the Annual Billing Factor. For each of the first 11 Monthly Billing Periods after the Commercial Operation Date, the Annual Billing Factor shall be computed based on the Net Electric Energy delivered, On-Peak Hours and Capacity for the then most recently completed Monthly Billing Periods. The Capacity utilized in calculating each Net Electric Energy Payment Adjustment shall be the Capacity reflected in the then most recently completed Targeted Capacity Test.

8.2 Statements and Payment.

8.2.1 Invoices. By the tenth day of each month following a month in which Net Electric Energy was delivered, Seller shall provide Buyer with an invoice setting forth the quantity of Net Electric Energy that was delivered, the price established for such Net Electric Energy and the total Net Electric Energy Payment due from Buyer. Buyer shall remit the amount due by wire transfer, pursuant to Seller’s invoice instructions, on or before twenty Business Days after Buyer’s receipt of Seller’s invoice.

8.2.2 Interest. If Buyer fails to pay any amount payable under this Agreement when due, then Buyer also will pay interest at the Specified Rate on the amount that is

- 9.7 Records. Seller will during the Term of this Agreement maintain appropriate books and records with respect to the operation and maintenance of the Facility consistent with Prudent Industry Practice and Applicable Law. Subject to the confidentiality requirements of Section 16.2, Seller will make such books and records available to Buyer for inspection and copying as Buyer may reasonably request to verify the accuracy of any statement, charge or computation made pursuant to this Agreement.
- 9.8 Reports. Subject to the confidentiality requirements of Section 16.2, each of the Parties will provide to the other Party all information that such other Party shall reasonably request in connection with the performance of this Agreement, including all relevant technical information required for the purchase and sale and delivery and acceptance of Net Electric Energy. Such reports shall include, but not be limited to, monthly construction reports beginning the first month after the Construction Contract is awarded.
- 9.9 Qualified Personnel. Seller will employ or contract with qualified personnel for the purpose of operating and maintaining the Facility.
- 9.10 Inspection. Buyer will have the right reasonably to inspect the Facility, upon reasonable prior notice to Seller, during normal business hours and subject to the safety rules and regulations of Seller. Neither any inspections by Buyer, nor any testing monitored by Buyer, shall relieve Seller of its obligation to maintain the Facility. In no event shall any Buyer statement, representation, or lack thereof, either express or implied, relieve Seller of its exclusive responsibility for the Facility. Any Buyer inspection of property or equipment owned or controlled by Seller shall not be construed as endorsing the design, fitness or operation of the Facility equipment nor as a warranty or guarantee.
- 9.11 Insurance. Seller shall carry and maintain no less than the insurance coverages described in the following sentence, applicable to all operations undertaken by Seller, in the *minimum amounts indicated in the following sentence*, and all such liability insurance shall name Buyer as an additional insured. The minimum required insurance coverages are: Commercial General Liability insurance written on an occurrence basis, with a minimum limit of [REDACTED] and a combined single limit of [REDACTED], and All Risk Property insurance covering the Facility against physical loss or damage, with a minimum limit sufficient to cover replacement of the Facility. Such minimum amounts may be satisfied either by primary insurance or by any combination of primary and excess/umbrella insurance. All such insurance is to be placed with Florida-admitted insurers rated B+ or better by A.M. Best Rating Service. The required insurance coverages shall be maintained in effect throughout the Term.

Seller shall cause its insurers or agents to provide Buyer with certificates of insurance evidencing the policies and endorsements required by this Section 9.11.

If Seller is unable to obtain the insurance coverage required by this Section 9.11, it shall promptly notify Buyer.

9.13 Fuel Availability and Cover Damages. During the Term of this Agreement, Seller shall maintain sufficient Fuel, [REDACTED]

[REDACTED]. At Buyer's request from time to time, Seller shall demonstrate this capability to Buyer's reasonable satisfaction. If Seller determines that the supply of Fuel on the Site and [REDACTED] without cure, then upon making such determination, Seller shall promptly notify Buyer of the deficiency, shall provide Buyer with a plan to cure the deficiency without disruption to the Facility's normal operations, and (if not already commenced) shall promptly commence Commercially Reasonable Efforts to implement such plan.

Notwithstanding the foregoing, if at any time during the Term of this Agreement the quantity of Fuel at the Site falls below that necessary to deliver the Energy associated with the Capacity for an uninterrupted [REDACTED], then for each day that the quantity of Fuel at the Site remains below such [REDACTED], Seller shall pay Buyer a replacement contingency fee of the greater of [REDACTED] per day or [REDACTED]

[REDACTED]. Seller shall not be obligated to make any such payments to the extent that any such shortage of Fuel at the Site is due to Force Majeure. At Buyer's request from time to time, Seller shall demonstrate the presence of such [REDACTED] Fuel supply at the Site to Buyer's reasonable satisfaction.

9.14 Seller Notification of Energy Estimate. By 8:00 a.m. Eastern Prevailing Time on each Business Day, Seller shall submit a good faith estimate of the quantity of Net Electric Energy to be supplied to Buyer for the next three (3) subsequent Business Days, including any days during that period that are not Business Days.

If, at any time following submission of a good faith estimate to Buyer on the Business Day preceding the next subsequent Business Day, Seller becomes aware of any change to any of the values contained in the good faith estimate or predicts that such values will be subject to change before the end of the next subsequent Business Day, then Seller shall promptly notify Buyer of such change or predicted change. Notwithstanding the foregoing, Seller shall have no liability to Buyer beyond Seller's obligation in this Agreement for any deviations between actual delivery of Net Electric Energy and any such Energy estimate or update thereto submitted to Buyer.

Article 10 Security for Performance

10.1 Seller Performance Security: On or before the date that Seller gives Buyer written notice that the Conditions Precedent in Section 2.3.1 are satisfied, Seller shall establish, fund, deliver to Buyer and maintain until the fifth anniversary of the Commercial Operation Date performance security in the form of Eligible Collateral ("Seller Performance Security") in an amount equal to [REDACTED]. From and after the fifth anniversary

of the Commercial Operation Date, Seller shall maintain throughout the remainder of the Term Seller Performance Security in an amount equal to [REDACTED]. In the event that a Material Adverse Change occurs in respect of Seller, then within two (2) Business Day(s) Seller shall deliver to Buyer additional Eligible Collateral equal to 50 percent of the then current Seller Performance Security amount; provided however, that in Buyer's sole discretion, based on a review of the overall circumstances of Seller's Material Adverse Change, Buyer may reduce the amount of additional Eligible Collateral required but in no event shall the amount be less than the amount required previous to the Material Adverse Change. Thereafter, if at any time Seller provides to Buyer reasonably detailed evidence demonstrating that Seller's financial condition has recovered to at least a level of creditworthiness as existed prior to the Material Adverse Change, then upon Buyer's approval, which shall not be unreasonably withheld, Buyer shall return to Seller any additional Eligible Collateral provided by Seller.

- 10.2 Replacement Collateral, Release of Collateral: Buyer shall upon two (2) Business Days written request by Seller after the Commercial Operation Date release the portion of the Eligible Collateral that is no longer required as provided in Section 10.1. Seller may periodically change the type(s) of Eligible Collateral by which it satisfies its obligations under Section 10.1, and upon receipt of substitute Eligible Collateral, Buyer shall promptly release the Eligible Collateral for which the substitution is being made. Following any termination of this Agreement, the Parties shall mutually agree to a final settlement of all obligations under this Agreement within 90 days of the date of termination, unless extended by mutual agreement of the Parties. After such settlement, any remaining Eligible Collateral that Buyer has not drawn upon shall be returned to Seller. Any Dispute between the Parties regarding such final settlement shall be resolved according to applicable procedures set forth in Section 16.13.
- 10.3 Draws and Replenishment: Buyer may draw upon Eligible Collateral provided by Seller following the occurrence of an Event of Default by Seller, or as otherwise provided in this Agreement, to recover any damages to which Buyer is entitled under this Agreement. In the event of any draw of amounts from Seller Performance Security permitted under this Agreement, except in the circumstance when this Agreement otherwise terminates, Seller shall within two (2) Business Days replenish the Eligible Collateral to the full amount required by Section 10.1.
- 10.4 Reporting: Seller shall promptly notify Buyer of any circumstance that results in Seller's failure to be in compliance with Seller Performance Security requirements of Article 10. From time to time, at Buyer's written request, Seller shall provide Buyer with such evidence as Buyer may reasonably request that Seller and any Seller Letter of Credit or Seller Security Account is in full compliance with this Agreement.

Article 11
Events of Default and Remedies

- 11.1 Termination Due to Event of Default. If an event specified in Section 11.2 (an “**Event of Default**”) occurs with respect to either Seller or Buyer, then the non-defaulting Party may terminate this Agreement immediately upon written notice to the defaulting Party. The terminating Party will be entitled to all available remedies at law or in equity, except as expressly limited by this Agreement (including Section 14.3).
- 11.2 Events of Default. The occurrence of any of the following events shall constitute an Event of Default:
- 11.2.1 Payment Default. With respect to a Party, if a Party fails to make, when due, any payment required under this Agreement, and that failure is not remedied on or before fifteen (15) days after a Party notifies the other Party of the failure, unless payment is the subject of a good-faith Dispute as described in Section 16.13.1.
- 11.2.2 Inability to Deliver. With respect to Seller, failure to maintain the capability of the Facility to provide at least [REDACTED] of its Capacity and associated Net Electric Energy as established in accordance with Section 3.3 for 60 consecutive days (except in cases of Planned Outages, Mutually Agreed Outages, or Force Majeure), if Seller does not commence a cure for such failure within 30 days after notice from Buyer.
- 11.2.3 Misrepresentation. With respect to a Party, if any representation or warranty made by the Party in this Agreement proves to have been false or misleading in any material respect when made, unless such Party cures or otherwise completes arrangements to hold the other Party harmless from the adverse effect of such misrepresentation within 60 days after notice thereof.
- 11.2.4 Default. With respect to a Party, if the Party fails to perform any covenant set forth in this Agreement (other than obligations that are otherwise specifically covered in this Section 11.2), which is not cured within 60 days after the other Party notifies the Party of the failure; provided that if such failure cannot be cured with due diligence within such 60-day period and the Party has commenced and is diligently continuing to attempt to effect a cure, the Event of Default shall not be deemed to occur until the expiration of such longer period, not to exceed an additional 60 days, as reasonably necessary diligently to complete such cure.
- 11.2.5 Bankruptcy and Insolvency. With respect to a Party, if the Party:
- (a) is dissolved (other than pursuant to a consolidation, amalgamation or merger);
 - (b) 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;

- (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 (1) 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 (2) is not dismissed, discharged, stayed or restrained in each case within 30 days of the institution or presentation thereof;
- (d) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger);
- (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 its assets;
- (f) 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;
- (g) causes or is subject to any event with respect to it, which, under the Applicable Laws of any jurisdiction, has an analogous effect to any of the events specified in clauses (a) through (f) (inclusive); or
- (h) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts.

11.2.6 Seller materially changes or modifies the Facility from that provided in Recital (A) with respect to its technology or Fuel, without the prior written consent of Buyer.

11.2.7 Seller fails to fulfill its obligations pertaining to Fuel Availability under Section 9.13.

11.2.8 Seller fails to provide the security and to comply with any of the provisions of Article 10.

11.2.9 Seller fails to maintain an Annual Billing Factor of [REDACTED] for 12 consecutive months or more.

- 11.3 Delay Damages. If the Commercial Operation Date does not occur within ninety (90) days after the Stipulated Commercial Operation Date, subject to extension for Force Majeure, Seller shall pay Buyer damages (“**Delay Damages**”) in an amount of [REDACTED] per day for each subsequent day until the Commercial Operation Date is achieved, unless this Agreement is sooner terminated pursuant to Section 11.4. Except as provided in Section 11.4, such Delay Damages shall be Buyer’s sole and exclusive remedy for Seller’s failure to achieve the Commercial Operation Date.
- 11.4 Termination Due to Delay. If the Commercial Operation Date does not occur within 180 days after the Stipulated Commercial Operation Date, subject to extension for Force Majeure, Buyer shall have the right to terminate this Agreement upon fifteen (15) days notice to Seller. Upon termination of this Agreement pursuant to this Section 11.4, Buyer shall be entitled to receive from Seller damages in the amount of [REDACTED] less the amount of Delay Damages paid to Buyer pursuant to Section 11.3. Such right to terminate and receive damages shall be Buyer’s sole and exclusive remedy for Seller’s failure to so achieve the Commercial Operation Date.

Article 12
Taxes/Change in Law

- 12.1 Responsibility. Seller will be responsible for all Taxes imposed or levied relating to the ownership or operation of the Facility. Buyer will be responsible for all Taxes imposed upon the purchase of Net Electric Energy from the Facility (including any applicable sales or use or similar Tax). If either Party is required to collect or remit any Tax on behalf of the other Party, the obligated Party will reimburse the paying Party for such Taxes.
- 12.2 Tax Reporting. Each of the Parties will be responsible for its own Tax reporting. For purposes of Tax reporting, the Parties will treat the transactions described in this Agreement in a manner consistent with the characterizations of such transactions in this Agreement.
- 12.3 Exemption. A Party, on notice from the other, shall provide a certificate of exemption or other reasonably satisfactory evidence of exemption if either Party is exempt from Taxes, and shall use Commercially Reasonable Efforts to obtain, and cooperate with the other Party obtaining, any exemption from or reduction of Tax.
- 12.4 Income and Other Taxes. Each Party shall be responsible for its own liabilities for any other Taxes, including income taxes, attributable to amounts paid to it under this Agreement.
- 12.5 Change in Law.
- 12.5.1 As used herein, “Change(s) in Law(s)” means: after the Effective Date, the adoption, enactment, imposition, promulgation, implementation, issuance, or modification by a Governmental Authority of any Applicable Law, or the issuance of an order, judgment, award or decree of a Governmental Authority

having the effect of the foregoing, including, but not limited to, the imposition on a Party by any Governmental Authority of any requirement with respect to compliance with the Clean Air Interstate Rule promulgated on May 12, 2005 (70 Fed. Reg. 25,162) or the Clean Air Mercury Rule promulgated on May 18, 2005 (70 Fed. Reg. 28,606) and any re-promulgation or re-issuance of such rules in response to a petition for reconsideration or litigation challenging such rules, regardless of the date on which such requirements are imposed.

- 12.5.2 The Parties acknowledge that Change(s) in Law(s), including, but not limited to Environmental Laws(s) could significantly increase the costs of complying with the terms of this Agreement (“Increased Costs”) and agree that, if any Change(s) in Law(s) should increase(s) a Party’s cost of performing its obligations under this Agreement above the threshold defined in Section 12.5.3 below, the Party affected by such Change(s) in Law(s) may avail itself of the remedies set forth in Section 12.5.4 below as its sole and exclusive remedies for such Change(s) in Law(s) .
- 12.5.3 The Parties recognize and agree that certain Change(s) in Law(s) may occur that do not rise to a level that the Parties desire to impact this Agreement. Accordingly, the Parties agree that for the purposes of this Agreement, Change(s) in Law(s) will not be deemed to have occurred unless the Increased Costs resulting from such Change(s) in Law(s) exceed [REDACTED] in the aggregate during the Term.
- 12.5.4 If a Party’s Increased Costs should meet the threshold requirements set forth in Section 12.5.3 above, and the non-affected Party does not agree, in its sole discretion, to compensate the affected Party for such Increased Costs, then the affected Party may terminate this Agreement upon not less than one hundred and eighty (180) Days written notice to the other Party in the manner provided for in Section 16.1. Notwithstanding the foregoing, Buyer agrees, if legally possible, to seek reimbursement for any such Increased Costs through any applicable cost recovery clause or comparable non-base rate recovery mechanism prior to invoking the termination provision in this Section 12.5.4. In the event that Buyer is not permitted to recover any such Increased Costs through any such clause by the Florida Public Service Commission, then Buyer shall have the right to immediately terminate this Agreement upon the issuance of a final order of the Commission in such matter.

Article 13 Representations and Warranties

obligations for the duration of the Force Majeure. Force Majeure shall not excuse the obligation to pay amounts due or owing under this Agreement. The Claiming Party shall remedy the Force Majeure with all reasonable dispatch and shall notify the non-Claiming Party as soon as practicable of the termination of such Force Majeure event. To the extent Buyer is unable to accept delivery of Net Electric Energy as provided under this Agreement due to Force Majeure, this Agreement will not be construed to prohibit Seller from selling Net Electric Energy to third parties during the continuance of such Force Majeure; provided, that nothing in this Agreement will obligate Buyer to transmit such Net Electric Energy to any third party. Seller shall reactivate the Facility at its own expense if the Facility is rendered inoperable due to actions of Seller or its agents or a Force Majeure Event.

- 15.2 Termination for Extended Force Majeure. In the event that a Force Majeure continues for more than three (3) consecutive calendar months, then, during the next three (3) consecutive months, so long as the Claiming Party is exercising due diligence to remedy the Force Majeure this Agreement shall remain in full force and effect. If at the end of such three (3) month period, the Parties agree that the cause of such Force Majeure can reasonably be expected to be remedied through the exercise of due diligence within six (6) additional months, the Claiming Party shall have an additional six (6) months to remedy such Force Majeure; provided that, if the parties are unable to agree, the matter shall be referred to an independent, neutral arbiter selected jointly by the parties to determine whether there is a reasonable probability that the effects of the Force Majeure condition can be remedied within six (6) additional months through the exercise of reasonable diligence. If the arbiter so determines, he shall have sole authority to grant the Claiming Party an additional cure period of up to six months from the expiration of the preceding cure period. If at the conclusion of the additional six-month cure period, the Force Majeure has not been remedied, the non-Claiming Party may terminate this Agreement upon notice to the Claiming Party.

15.2.1 Termination by Claiming Party. If the Claiming Party determines that curing the effects of a Force Majeure event will cost the Claiming Party in excess of [REDACTED] in out-of-pocket costs, then the Claiming Party, upon demonstration to the non-Claiming Party's reasonable satisfaction of the anticipated cost of the cure, shall be entitled to terminate the Agreement.

EXHIBIT D

**CALCULATION OF COST SAVINGS
FROM THE BG&E AMENDED CONTRACT**

(REDACTED)

**Biomass Gas and Electric (BG&E)
2009 Avoided Cost Analysis**

Dollars in \$000

	NPV	Nominal	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032
Mid Year			6/30/2012	6/30/2013	6/30/2014	6/30/2015	6/30/2016	6/30/2017	6/30/2018	6/30/2019	6/30/2020	6/30/2021	6/30/2022	6/30/2023	6/30/2024	6/30/2025	6/30/2026	6/30/2027	6/30/2028	6/30/2029	6/30/2030	6/30/2031	6/30/2032
TTM			3.00	4.00	5.00	6.00	7.01	8.01	9.01	10.01	11.01	12.01	13.01	14.01	15.01	16.01	17.01	18.01	19.01	20.01	21.01	22.01	23.02
Discount Factor			0.78	0.72	0.67	0.61	0.57	0.52	0.48	0.44	0.41	0.38	0.35	0.32	0.29	0.27	0.25	0.23	0.21	0.20	0.18	0.17	0.15

Payments to BG&E:

Months		240	6	12	12	12	12	12	12	12	12	12	12	12	12	12	12	12	12	12	12	12	6
Capacity MW		45	45	45	45	45	45	45	45	45	45	45	45	45	45	45	45	45	45	45	45	45	45
Energy MWh	2,776,930	7,179,375	180,836	358,723	358,723	358,723	359,706	358,723	358,723	358,723	359,706	358,723	358,723	358,723	359,706	358,723	358,723	358,723	359,706	358,723	358,723	358,723	178,870
Capacity Factor		91%	92%	91%	91%	91%	91%	91%	91%	91%	91%	91%	91%	91%	91%	91%	91%	91%	91%	91%	91%	91%	91%

Energy \$/MWh

Total \$/MWh

Energy Payments

Total Payments

2014 CT Avoided Costs:

Months		217	0	0	7	12	12	12	12	12	12	12	12	12	12	12	12	12	12	12	12	12	6
Energy MWh	2,776,930	7,179,375	180,836	358,723	358,723	358,723	359,706	358,723	358,723	358,723	359,706	358,723	358,723	358,723	359,706	358,723	358,723	358,723	359,706	358,723	358,723	358,723	178,870
Capacity Factor		91%	91%	91%	91%	91%	91%	91%	91%	91%	91%	91%	91%	91%	91%	91%	91%	91%	91%	91%	91%	91%	91%
Heat Rate		10,760	10,760	10,760	10,760	10,760	10,760	10,760	10,760	10,760	10,760	10,760	10,760	10,760	10,760	10,760	10,760	10,760	10,760	10,760	10,760	10,760	10,760

Capacity \$/kw-mo.

Energy \$/MWh

Total \$/MWh

Capacity Cost

Energy Cost

Total Avoided Cost

Net Benefit (Cost)

Payments to BGE:

Annual NPV

Cumulative NPV

Avoided Costs:

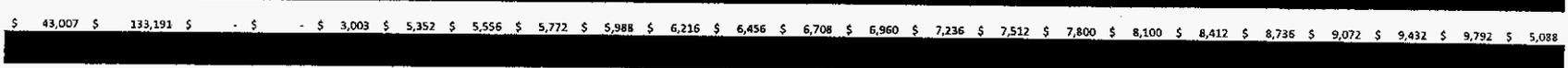
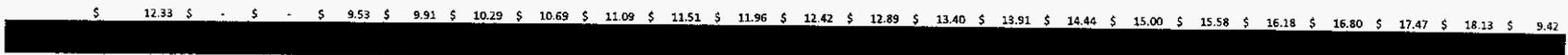
Annual NPV

Cumulative NPV

Net Benefit (Cost):

Annual NPV

Cumulative NPV



Annual NPV	\$ 47,054	1,166	2,547	3,705	5,289	3,543	1,777	1,574	1,532	1,562	1,932	2,051	2,273	1,822	2,115	2,195	2,466	2,233	2,182	2,132	2,078	880
Cumulative NPV		1,166	3,713	7,418	12,707	16,250	18,028	19,602	21,134	22,696	24,628	26,679	28,952	30,774	32,889	35,083	37,549	39,782	41,964	44,096	46,174	47,054

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