



Dianne M. Triplett
ASSOCIATE GENERAL COUNSEL
Duke Energy Florida, Inc.

April 1, 2014

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

RECEIVED-FPSC
14 APR - 1 PM 12:08
COMMISSION
CLERK

Re: *Petition for Approval of Amended Standard Offer Contract (Schedule COG-2); Docket No. _____*

Dear Ms. Stauffer:

Pursuant to Rule 25-17.0832(4), F.A.C., enclosed for filing on behalf of Duke Energy Florida, Inc. is the original and seven (7) copies of its Petition for Approval of Amended Standard Offer Contract (Schedule COG-2) based on a combined cycle avoided unit.

Thank you for your assistance in this matter. Should have any questions, please feel free to contact me at (727) 820-4692.

Sincerely,


Dianne Triplett

COM _____
AFD _____ DT/at
APA _____ Enclosures
ECO _____ 1
ENG _____ 5
GCL _____ 1
IDM _____
TEL _____
CLK _____

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition of Duke Energy
Florida for approval of amended
standard offer contract (Schedule
COG-2).

Docket No. _____

Submitted for filing:
April 1, 2014

PETITION

Duke Energy Florida, Inc. ("DEF" or "the Company"), pursuant to Sections 366.051 and 366.91(3), F.S., and Rules 25-17.0832(4) and 25-17.250, F.A.C., hereby petitions the Florida Public Service Commission ("the Commission") for approval of DEF's Amended Standard Offer Contract. The Amended Standard Offer Contract is attached hereto in standard format as Exhibit A and in legislative format as Exhibit B. In support of this petition, DEF submits the following:

1. DEF is a public utility subject to the regulatory jurisdiction of the Commission pursuant to Chapter 366, F.S. The Company's principal place of business is located at 299 First Avenue North, St. Petersburg, Florida 33701.
2. All notices, pleadings and correspondence required to be served on the petitioner should be directed to:

Dianne M. Triplett
Post Office Box 14042
St. Petersburg, FL 33733-4042
Facsimile: (727) 820-4692
Dianne.triplett@duke-energy.com

For express deliveries by private carrier, please use the address in paragraph 1 above.

3. The Amended Standard Offer Contract attached hereto is consistent with Commission Rule 25-17.0832 (4)-(6), F.A.C., governing standard offer contracts and tariffs. The avoided unit, on which the proposed standard offer contract is based, is an undesignated 793 MW combined cycle fueled by natural gas with a scheduled in-service date of June 1, 2021. The changes from the most recent standard offer are shown in underline and strike-through format in Exhibit B and affects the following sheets: 9.403, 9.404, 9.406, 9.407, 9.408, 9.409, 9.410, 9.412, 9.413, 9.415, 9.416, 9.418, 9.419, 9.420, 9.421, 9.422, 9.423, 9.424, 9.425, 9.426, 9.427, 9.428, 9.429, 9.430, 9.431, 9.432, 9.439, 9.441, 9.455, 9.457, 9.458, 9.467 and 9.468. The attached Exhibit C contains the economic and financial assumptions for the cost parameters and the K Factor of the combined cycle unit on which the amended standard offer contract is based.

4. Moreover, because DEF's Ten-Year Site Plan filed with the Commission on April 1, 2014, does not include a Combustion Turbine (CT) unit, DEF is suspending sheets 9.500 through 9.575 approved by the Commission in Docket No. 130069-EI. *See* Rule 25-17.250(1), F.A.C.¹

5. The proposed Amended Standard Offer Contract is required to be filed pursuant to Section 366.91(3), F.S., which states that "[o]n or before January 1, 2006, each public utility must continuously offer a purchase contract to producers of renewable energy." Pursuant to Chapter 366.91(3), F.S., DEF hereby submits its Amended Standard Offer Contract attached as Exhibit A for approval. The Amended Standard Offer Contract will be continuously offered, will have a term of 10 to 35 years, and will not have a subscription limit. The Amended Standard Offer Contract meets the requirements set forth in Section 366.91(3), F.S.

WHEREFORE, for the above-stated reasons, DEF respectfully requests that the Commission grant this petition and approve the Amended Standard Offer Contract in Exhibit A filed with this petition.

¹ DEF notes that Sheets 9.500 through 9.575 were set to expire on April 1, 2014.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Dianne M. Triplett", written over a horizontal line.

DIANNE M. TRIPLETT

Associate General Counsel

MATTHEW R. BERNIER

Senior Counsel

Duke Energy Florida, Inc.

299 1st Avenue North

St. Petersburg, FL 33701

Telephone: (727) 820-4692

Attorneys for

DUKE ENERGY FLORIDA, INC.

EXHIBIT A

AMENDED STANDARD OFFER CONTRACT
(Clean copy)

Tariff Sheets:

9.403, 9.404, 9.406, 9.407, 9.408, 9.409, 9.410, 9.412, 9.413, 9.415, 9.416,
9.418, 9.419, 9.420, 9.421, 9.422, 9.423, 9.424, 9.425, 9.426, 9.427, 9.428,
9.429, 9.430, 9.431, 9.432, 9.439, 9.441, 9.455, 9.457, 9.458, 9.467 and 9.468.

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18. Force Majeure	9.431
19. Representations, Warranties, and Covenants of RF/QF	9.433
20. General Provisions	9.435
Execution	9.441



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

THIS STANDARD OFFER CONTRACT FOR THE PURCHASE OF FIRM CAPACITY AND ENERGY (hereinafter referred to as the **"Contract"**) is made and entered this ____ day of _____, ____ (hereinafter referred to as the **"Execution Date"**), by and between _____ (hereinafter the Renewable Energy Provider/Qualifying Facility (**"RF/QF"**), and Duke Energy Florida, Inc. d/b/a Duke Energy (hereinafter **"DEF"**), a private utility corporation organized and existing under the laws of the State of Florida. The RF/QF and DEF shall be individually identified herein as the **"Party"** and collectively as the **"Parties"**. This Contract contains five Appendices which are incorporated into and made part of this Contract: Appendix A: Monthly Capacity Payment Calculation; Appendix B: Termination Fee; Appendix C: Detailed Project Information; Appendix D: Rate Schedule COG-2; Appendix E: Agreed Upon Payment Schedules and Other Mutual Agreements; and Appendix F: Florida Public Service Commission (**"FPSC"**) Rules 25-17.080 through 25-17.310, F.A.C.

WITNESSETH:

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

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

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

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

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

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

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

“Business Day” means any day except a day upon which banks licensed to operate in the State of Florida are authorized, directed or permitted to close, Saturday, Sunday or a weekday that is observed as a public holiday in the State of Florida.

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

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

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

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

“Committed Capacity” or “CC” means the capacity in MW that the RF/QF commits to sell to DEF, the amount of which shall be determined in accordance with Section 7.

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

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

“Completed Permits Date” means the date by which the RF/QF must complete licensing and certification, and obtain all federal, state and local governmental, environmental, and licensing approvals required to initiate construction of the Facility including Qualifying Facility status. This date is specified in Section 4.

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

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

“Contract” means this standard offer contract for the purchase of Firm Capacity and Energy from a Renewable Energy Producer or Qualifying Facility with a nameplate capacity of less than 100 kW.

“Creditworthy” with respect to a Party or its credit support provider, as applicable, means a party is rated at least BBB by Standard & Poor’s (S&P), or at least Baa3 by Moody’s Investor Services (Moody’s). Rating shall be the unsecured, senior long-term debt rating, (not supported by third party credit enhancement) or the issuer rating will be used if not available.

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

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

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

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

“Dispute” shall have the meaning assigned to it in Section 20.9.

“Drop Dead Date” means the date which is twelve (12) months following the Execution Date.

“Eastern Prevailing Time” or “EPT” means the time in effect in the Eastern Time Zone of the United States of America, whether Eastern Standard Time or Eastern Daylight Savings Time.

“Effective Date” has the meaning assigned to it in Section 5.

“Electrical Interconnection Point” means the physical point at which the Facility is connected with the Transmission System or, if RF/QF interconnects with a Transmission System other than DEF’s, DEF’s interconnection with the Transmission Provider’s Transmission System, or such other physical point on which RF/QF and DEF may agree.

“Eligible Collateral” means (i) a Letter of Credit from a Qualified Institution (ii) a cash depositor a combination of (i), and/or (ii) as outlined in Section 11.

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

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

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

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

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

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

“Facility” means all equipment, as described in this Contract, used to produce electric energy and, and all equipment that is owned or controlled by the RF/QF required for parallel operation with the Transmission System. In the case of a cogenerator the Facility includes all equipment that is owned or controlled by the RF/QF to produce useful thermal energy through the sequential use of energy.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“Material Adverse Change” means any of the following events; (a) the RF/QF or its guarantor, if applicable, is no longer Creditworthy or (b) the RF/QF or its guarantor, if applicable, defaults on an aggregate of fifty million dollars (\$50,000,000) or five percent (5%) of equity, whichever is less.

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

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

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

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

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

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

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

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

“Qualifying Facility” or “QF” means a cogenerator, small power producer, or non-utility generator that has been certified or self-certified by the FERC as meeting certain ownership, operating and efficiency criteria established by the Federal Energy Regulatory Commission pursuant to the Public Utility Regulatory Policies Act of 1978 (“PURPA”), the criteria for which are currently set forth in 18 C.F.R. § 292, *et seq.* (2006), Section 210 of PURPA, 16 U.S.C. § 824a-3 (2005), 16 U.S.C. 796 *et seq.* (2006), and Section 1253 of EPAct 2005, Pub. L. No. 109-58, § 1253, 119 Stat. 594 (2005) or, alternatively, analogous provisions under the laws of the State of Florida.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“Termination Date” means the date upon which this Contract terminates unless terminated earlier in accordance with the provisions hereof. This date is specified in Section 4.

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

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

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

“Transmission System” means the system of electric lines comprised wholly or substantially of high voltage lines, associated system protection, system stabilization, voltage transformation, and capacitance, reactance and other electric plant used for conveying electricity from a generating station to a substation, from one generating station to another, from one substation to another, or to or from any Electrical Interconnection Point or to ultimate consumers and shall include any interconnection owned by the Transmission Provider or DEF, but shall in no event include any lines which the Transmission Provider has specified to be part of the Distribution System except for any distribution facilities required to accept capacity and energy from the Facility.

3. Term of Contract

Except as otherwise provided herein, this Contract shall become effective immediately upon its execution by the Parties and shall end at 12:01 a.m. on the Termination Date, (the “Term”) unless terminated earlier in accordance with the provisions hereof. Notwithstanding the foregoing, if the Capacity Delivery Date of the Facility is not accomplished by the RF/QF before the Required Capacity Delivery Date (or such later date as may be permitted by DEF pursuant to Section 7), this Contract shall be rendered null and void and DEF's shall have no obligations under this Contract.

4. Minimum Specifications and Milestones

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

Avoided Unit	Undesignated CC
Avoided Unit Capacity	793 MW
Avoided Unit In-Service Date	June 1, 2021
Avoided Unit Heat Rate	6,741 BTU/kWh
Avoided Unit Variable O&M	0.545¢ per kWh in mid-2014 dollars escalating annually at 2.50%
Avoided Unit Life	35 years
Capacity Payments begin	Avoided Unit In-Service Date unless Option B, or D is selected or amended in Appendix E
Termination Date	May 31, 2031 (10 years) unless amended in Appendix E
Minimum Performance Standards – On Peak Availability Factor*	87%
Minimum Performance Standards – Off Peak Availability Factor	87%
Minimum Availability Factor Required to qualify for a Capacity payment	67%
Expiration Date	April 1, 2015
Completed Permits Date	June 1, 2017
Exemplary Early Capacity Payment Date	January 1, 2016

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

5. Conditions Precedent

- (a) Unless otherwise waived in writing by DEF, on or before the Drop Dead Date, RF/QF shall satisfy the following Conditions Precedent:
- (i) RF/QF shall have obtained firm transmission service necessary to deliver Capacity and energy from the Facility to the Electrical Interconnection Point, in a form and substance satisfactory to RF/QF in its sole discretion;
 - (ii) RF/QF shall have obtained the Project Consents and any other Consents for which it is responsible under the terms hereof in a form and substance satisfactory to RF/QF in its sole discretion;
 - (iii) RF/QF shall have entered into Financing Documents relative to the construction of the Facility and have achieved Financial Closing in a form and substance satisfactory to RF/QF in its sole discretion;
 - (iv) RF/QF shall have entered into the Project Contracts in a form and substance satisfactory to RF/QF in its sole discretion;
 - (v) RF/QF shall have obtained insurance policies or coverage in compliance with Section 17;
 - (vi) Each Party shall have delivered to the other Party (i) a copy of its constitutional documents (certified by its corporate secretary as true, complete and up-to-date) and (ii) a copy of a corporate resolution approving the terms of this Contract and the transactions contemplated hereby and authorizing one or more individuals to execute this Contract on its behalf (such copy to have been certified by its corporate representative as true, complete and up-to-date);
 - (vii) RF/QF shall have obtained Qualifying Facility status from either the FPSC or FERC.
- (b) Promptly upon satisfaction (or waiver in writing) of the Conditions Precedent to be satisfied, the Party having satisfied the same shall deliver to the other Party a certificate evidencing such satisfaction. Subject to there being no Event of Default which has occurred and/or is continuing as of the date upon which the last of such certificates is delivered, the date of such last certificate shall constitute the effective date of this Contract (the "Effective Date").
- (c) Unless all Conditions Precedent are satisfied on or before the Drop Dead Date or such Conditions Precedent are waived in writing, this Contract shall terminate on such date and neither Party shall have any further liability to the other Party hereunder.
- (d) RF/QF shall achieve the Capacity Delivery Date on or before the Required Capacity Delivery Date.

7. Committed Capacity/Capacity Delivery Date

- 7.1** In the event that the RF/QF elects to make no commitment as to the quantity or timing of its deliveries to DEF, then its Committed Capacity as defined in the following Section 7.2 shall be zero (0) MW. If the Committed Capacity is zero (0) MW, Sections 7.2 through Section 7.7 and all of Section 8 shall not apply.
- 7.2** If the RF/QF commits to sell capacity to DEF, the amount of which shall be determined in accordance with this Section 7. Subject to Section 7.4, the Committed Capacity is set at _____ kW, with an expected Capacity Delivery Date on or before the Required Capacity Delivery Date.
- 7.3** Capacity testing of the Facility (each such test a Committed Capacity Test) shall be performed in accordance with the procedures set forth in Section 8. The Demonstration Period for the first Committed Capacity Test shall commence no earlier than ninety (90) days before the Required Capacity Delivery Date and testing must be completed before the Avoided Unit In-Service Date or an earlier date in Appendix E. The first Committed Capacity Test shall not be successfully completed unless the Facility demonstrates a Capacity of at least one hundred percent (100%) of the Committed Capacity set forth in Section 7.2. Subject to Section 8.1, the RF/QF may schedule and perform up to three (3) Committed Capacity Tests to satisfy the requirements of the Contract with respect to the first Committed Capacity Test.
- 7.4** In addition to the first Committed Capacity Test, DEF shall have the right to require the RF/QF, after notice of no less than ten (10) Business Days prior to such proposed event, to validate the Committed Capacity by means of a Committed Capacity Test at any time, up to two (2) times per year, the results of which shall be provided to DEF within seven (7) calendar days of the conclusion of such test. On and after the date of such requested Committed Capacity Test, and until the completion of a subsequent Committed Capacity Test, the Committed Capacity shall be set at the lower of the Capacity tested or the Committed Capacity as set forth in Section 7.2. Provided however, any such second test requested within a twelve (12) month period must be for cause.

- 7.5 Notwithstanding anything contrary to the terms hereof, the Committed Capacity may not exceed the amount set forth in Section 7.2 without the consent of DEF, which consent shall be granted in DEF's sole discretion.
- 7.6 Unless Option B or D as contained in Appendix D or Appendix E is chosen by RF/QF, DEF shall make no Capacity Payments to the RF/QF prior to the Avoided Unit In-Service Date.
- 7.7 The RF/QF shall be entitled to receive Capacity Payments beginning on the Capacity Delivery Date, provided the Capacity Delivery Date occurs before the Required Capacity Delivery Date (or such later date permitted by DEF). If the Capacity Delivery Date does not occur before the Required Capacity Delivery Date, DEF shall immediately be entitled to draw down the Completion/Performance Security in full.

8. Testing Procedures

- 8.1 The Committed Capacity Test must be completed successfully within the Demonstration Period, which period, including the approximate start time of the Committed Capacity Test, shall be selected and scheduled by the RF/QF by means of a written notice to DEF delivered at least thirty (30) calendar days prior to the start of such period. The provisions of the foregoing sentence shall not apply to any Committed Capacity Test ordered by DEF under any of the provisions of this Contract. DEF shall have the right to be present onsite to monitor firsthand any Committed Capacity Test required or permitted under this Contract.
- 8.2 The Committed Capacity Test results shall be based on a test period of twenty-four (24) consecutive hours (the "Committed Capacity Test Period") at the highest sustained net kW rating at which the Facility can operate without exceeding the design operating conditions, temperature, pressures, and other parameters defined by the applicable manufacturer(s) for steady state operations at the Facility. The Committed Capacity Test Period shall commence at the time designated by the RF/QF pursuant to Section 8.1 or at such time requested by DEF pursuant to Section 7.4; provided, however, that the Committed Capacity Test Period may commence earlier than such time in the event that DEF is notified of, and consents to, such earlier time.
- 8.3 Normal station service use of unit auxiliaries, including, without limitation, cooling towers, heat exchangers, and other equipment required by law, shall be in service during the Committed Capacity Test Period.
- 8.4 The Capacity of the Facility shall be the minimum average hourly net output in kW (generator output minus auxiliary) measured over the Committed Capacity Test Period.

- 8.5** The Committed Capacity Test shall be performed according to standard industry testing procedures for the appropriate technology of the RF/QF.
- 8.6** The results of any Committed Capacity Test, including all data related to Facility operation and performance during testing, shall be submitted to DEF by the RF/QF within seven (7) calendar days of the conclusion of the Committed Capacity Test. The RF/QF shall certify that all such data is accurate and complete.

9. Payment for Electricity Produced by the Facility

9.1 Energy

- 9.1.1** DEF agrees to pay the RF/QF for energy produced by the Facility and delivered to DEF in accordance with the rates and procedures contained in DEF's approved Rate Schedule COG-1, as it may be amended from time to time if the Committed Capacity pursuant to Section 7.2 is set to zero. If the Committed Capacity is greater than zero MW, then DEF agrees to pay the RF/QF for energy produced by the Facility and delivered to DEF in accordance with the rates and procedures contained in Appendix D, as it may be amended from time to time. The Parties agree that this Contract shall be subject to all of the provisions contained in Rate Schedule COG-1 or Appendix D whichever applies as approved and on file with the FPSC.
- 9.1.2** DEF may, at its option, limit deliveries under this Contract to 110% of the Committed Capacity as set forth in Section 7. In the event that DEF chooses to limit deliveries, any energy in excess of 110% of the Committed Capacity will be paid for at the rates defined in Rate Schedule COG-1 and shall not be included in the calculations in Appendix A hereto.

9.2 Capacity

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

9.3 Payments for Energy and Capacity

9.3.1 Payments due the RF/QF will be made monthly, and normally by the twentieth Business Day following the end of the billing period. The kilowatt-hours sold by the RF/QF and the applicable avoided energy rate at which payments are being made shall accompany the payment to the RF/QF.

9.3.2 Payments to be made under this Contract shall, for a period of not longer than two (2) years, remain subject to adjustment based on billing adjustments due to error or omission by either Party, provided that such adjustments have been agreed to between the Parties.

10. Electricity Production and Plant Maintenance Schedule

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

10.2 By October 31 of each calendar year, DEF shall notify the RF/QF in writing whether the requested scheduled maintenance periods in the detailed plan are acceptable. If DEF does not accept any of the requested scheduled maintenance periods, DEF shall advise the RF/QF of the time period closest to the requested period(s) when the outage(s) can be scheduled. The RF/QF shall only schedule outages during periods approved by DEF, and such approval shall not be unreasonably withheld. Once the schedule for the detailed plan has been established and approved, either Party requesting a subsequent change in such schedule, except when such change is due to Force Majeure, must obtain approval for such change from the other Party. Such approval shall not be unreasonably withheld or delayed. Scheduled maintenance outage days shall be limited to twenty four days per calendar year. In no event shall maintenance periods be scheduled during the following periods: June 1 through September 15 and December 1 through and including the last day of February.

10.3 The RF/QF shall comply with reasonable requests by DEF regarding day-to-day and hour-by-hour communication between the Parties relative to electricity production and maintenance scheduling.

- 10.4** The Parties recognize that the intent of the availability factor in Section 4 of this Contract includes an allowance for scheduled outages, forced outages and forced reductions in the output of the Facility. Therefore, the RF/QF shall provide DEF with notification of any forced outage or reduction in output which shall include the time and date at which the forced outage or reduction occurred, a brief description of the cause of the outage or reduction and the time and date when the forced outage or reduction ceased and the Facility was able to return to normal operation. This notice shall be provided to DEF within seventy-two (72) hours of the end of the forced outage or reduction.

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

10.5 Dispatch and Control

10.5.1 Power supplied by the RF/QF hereunder shall be in the form of three-phase 60 hertz alternating current, at a nominal operating voltage of _____ volts (_____ kV) and power factor dispatchable and controllable in the range of 90% lagging to 90% leading as measured at the interconnection point to maintain system operating parameters, including power factor, as specified from time to time by DEF.

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

- 10.5.3** If the Facility is separated from the DEF system for any reason, under no circumstances shall the RF/QF reconnect the Facility to DEF's system without first obtaining DEF'S specific approval.
- 10.5.4** During the term of this Contract, the RF/QF shall employ qualified personnel for managing, operating and maintaining the Facility and for coordinating such with DEF. The RF/QF shall ensure that operating personnel are on duty at all times, twenty-four (24) hours a calendar day and seven (7) calendar days a week. Additionally, during the term of this Contract, the RF/QF shall operate and maintain the Facility in such a manner as to ensure compliance with its obligations hereunder and in accordance with applicable law and Prudent Utility Practices.
- 10.5.5** DEF shall not be obligated to purchase, and may require curtailed or reduced deliveries of energy to the extent allowed under FPSC Rule 25-17.086 and under any curtailment plan which DEF may have on file with the FPSC from time to time.
- 10.5.6** During the term of this Contract, the RF/QF shall maintain sufficient fuel on the site of the Facility to deliver the capacity and energy associated with the Committed Capacity for an uninterrupted seventy-two-(72) hour period. At DEF's request, the RF/QF shall demonstrate this capability to DEF's reasonable satisfaction. During the term of this Contract, the RF/QF's output shall remain within a band of plus or minus ten percent (10%) of the daily output level or levels specified by the plant operator, in ninety percent (90%) of all operating hours under normal operating conditions. This calculation will be adjusted to exclude forced outage periods and periods during which the RF/QF's output is affected by a Force Majeure event.

11. Completion/Performance Security

- 11.1** Simultaneous with the execution of this Contract RF/QF shall deliver to DEF Eligible Collateral in an amount equal to \$30.00/kw of Committed Capacity as Completion/Performance Security.

- 11.2** The choice of the type of Eligible Collateral by the RF/QF may be selected from time to time by the RF/QF and upon receipt of substitute Eligible Collateral, DEF shall promptly release such Eligible Collateral. Following any termination of this Contract, the Parties shall mutually agree to a final settlement of all obligations under this Contract which such period shall not exceed 90 days from such termination date unless extended by mutual agreement between the Parties. After such settlement, any remaining Eligible Collateral posted by the RF/QF that has not been drawn upon by DEF pursuant to its rights under this Contract shall be returned to the RF/QF. Any dispute between the Parties regarding such final settlement shall be resolved according to applicable procedures set forth in Section 20.9.
- 11.3** Draws, Replenishment - DEF may draw upon Eligible Collateral provided by the RF/QF following the occurrence of an Event of Default or pursuant to the other provisions of this Contract in order to recover any damages to which DEF is entitled to under this Contract. In the event of such a draw then, except in the circumstance when this Contract otherwise terminates, the RF/QF shall within five (5) Business Days replenish the Eligible Collateral to the full amounts required.

- 11.4** In the event that the (a) Capacity Delivery Date occurs before the Required Capacity Delivery Date and (b) the ACBF is equal to or greater than 87% for the first twelve (12) months following the Capacity Delivery Date then DEF will return the Completion/Performance Security to the RF/QF within ninety (90) days of the first anniversary of the Capacity Delivery Date. In the event that the Capacity Delivery Date does not occur before the Required Capacity Delivery Date then DEF shall immediately be entitled to draw down the Completion/Performance Security in full. In the event that the ACBF is less than 87% for any of the first twelve (12) months following the Capacity Delivery Date then DEF shall retain the Completion/Security until the ACBF is equal to or greater than 87% for 12 consecutive months. Upon the completion of twelve (12) consecutive months with the ACBF greater than or equal to 87% then DEF will return the Completion/Performance Security within ninety (90) days.
- 11.7** Reporting - RF/QF shall promptly notify DEF of any circumstance that results in RF/QF's failure to be in compliance with the RF/QF Performance Security Requirements of this Section 11. From time to time, at DEF's written request, RF/QF shall provide DEF with such evidence as DEF may reasonably request, that RF/QF Letter of Credit is in full compliance with this Contract.

12. Termination Fee and Security

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

12.1.2 DEF shall have the right and the RF/QF shall be required to monitor the financial condition of (i) the issuer(s) in the case of any Letter of Credit and (ii) the insurer(s), in the case of any bond. In the event the senior debt rating of any issuer(s) or insurer(s) has deteriorated to the extent that they no longer meet the issuer requirements,, DEF may require the RF/QF to replace the letter(s) of credit or the bond, as applicable. In the event that DEF notifies the RF/QF that it requires such a replacement, the replacement letter(s) of credit or bond, as applicable, must be issued by a financial institution(s) or insurer(s) with an acceptable credit rating, and meet the requirements of Section 12.1.1 within thirty (30) calendar days following such notification. Failure by the RF/QF to comply with the requirements of this Section 12.1.2 shall be grounds for DEF to draw in full on any existing Letter of Credit or bond and to exercise any other remedies it may have hereunder.

12.1.3 After the close of each calendar quarter (March 31, June 30, September 30, and December 31) occurring subsequent to the Capacity Delivery Date, upon DEF's issuance of the Termination Fee calculation as described in Section 12.1, the RF/QF must provide DEF, within ten calendar (10) days, written assurance and documentation (the "Security Documentation"), in form and substance acceptable to DEF, that the amount of the Termination Security is sufficient to cover the balance of the Termination Fee through the end of the following quarter. In addition to the foregoing, at any time during the term of this Contract, DEF shall have the right to request and the RF/QF shall be obligated to deliver within five (5) calendar days of such request, such Security Documentation. Failure by the RF/QF to comply with the requirements of this Section 12.1.3 shall be grounds for DEF to draw in full on any existing Letter of Credit or bond or to retain any cash deposit, and to exercise any other remedies it may have hereunder.

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

13. Performance Factor

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

14. Default

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

- (a) the RF/QF changes or modifies the Facility from that provided in Section 2 with respect to its type, location, technology or fuel source, without the prior written approval of DEF;
- (b) after the Capacity Delivery Date, the Facility fails for twelve (12) consecutive months to maintain an Annual Capacity Billing Factor, as described in Appendix A, of at least sixty seven percent (67%);
- (c) the RF/QF fails to satisfy its obligations to maintain sufficient fuel on the site of the Facility to deliver the capacity and energy associated with the Committed Capacity for an uninterrupted seventy-two-(72) hour period under Section 10.5.6 hereof;
- (d) the failure to make when due, any payment required pursuant to this Contract if such failure is not remedied within three (3) Business Days after written notice.
- (e) either Party, or the entity which owns or controls either Party, ceases the conduct of active business; or if proceedings under the federal bankruptcy law or insolvency laws shall be instituted by or for or against either Party or the entity which owns or controls either Party; or if a receiver shall be appointed for either Party or any of its assets or properties, or for the entity which owns or controls either Party; or if any part of either Party's assets shall be attached, levied upon, encumbered, pledged, seized or taken under any judicial process, and such proceedings shall not be vacated or fully stayed within thirty (30) calendar days thereof; or if either Party shall make an assignment for the benefit of creditors, or admit in writing its inability to pay its debts as they become due;
- (f) the RF/QF fails to give proper assurance of adequate performance as specified under this Contract within thirty (30) calendar days after DEF, with reasonable grounds for insecurity, has requested in writing such assurance;
- (g) the RF/QF fails to achieve licensing, certification, and all federal, state and local governmental, environmental, and licensing approvals required to initiate construction of the Facility by no later than the Completed Permits Date;
- (h) the RF/QF fails to comply with the provisions of Section 11 hereof;
- (i) any of the representations or warranties, including the certification of the completion of the Conditions Precedent, made by either Party in this Contract is false or misleading in any material respect as of the time made;

- (j) if, at any time after the Capacity Delivery Date, the RF/QF reduces the Committed Capacity due to an event of Force Majeure and fails to repair the Facility and reset the Committed Capacity to the level set forth in Section 7.2 (as such level may be reduced by Section 7.4) within twelve (12) months following the occurrence of such event of Force Majeure; or
- (k) either Party breaches any material provision of this Contract not specifically mentioned in this Section 14;
- (l) the RF/QF fails to maintain its status as a Qualifying Facility.

15. Rights in the Event of Default

15.1 Upon the occurrence of any of the Events of Default in Section 14, the DEF may, at its option:

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

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

15.1.3 exercise any other remedy(ies) which may be available to DEF at law or in equity.

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

16. Indemnification

16.1 DEF and the RF/QF shall each be responsible for its own facilities. DEF and the RF/QF shall each be responsible for ensuring adequate safeguards for other DEF customers, DEF's and the RF/QF's personnel and equipment, and for the protection of its own generating system. Each Party (the "Indemnifying Party") agrees, to the extent permitted by applicable law, to indemnify, pay, defend, and hold harmless the other Party (the "Indemnified Party") and its officers, directors, employees, agents and contractors (hereinafter called respectively, "DEF Entities" and "RF/QF Entities") from and against any and all claims, demands, costs or expenses for loss, damage, or injury to persons or property of the Indemnified Party (or to third parties) directly caused by, arising out of, or resulting from:

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

16.2 Payment by an Indemnified Party to a third party shall not be a condition precedent to the obligations of the Indemnifying Party under Section 16. No Indemnified Party under Section 16 shall settle any claim for which it claims indemnification hereunder without first allowing the Indemnifying Party the right to defend such a claim. The Indemnifying Party shall have no obligations under Section 16 in the event of a breach of the foregoing sentence by the Indemnified Party. Section 16 shall survive termination of this Contract.

17. Insurance

17.1 The RF/QF shall procure or cause to be procured and shall maintain throughout the entire Term of this Contract, a policy or policies of liability insurance issued by an insurer acceptable in the state of Florida on a standard "Insurance Services Office" commercial general liability and/or excess liability form or equivalent and Workers' Compensation in accordance with the statutory requirements of the state of Florida (such policy or policies, collectively, the "RF/QF Insurance"). A certificate of insurance shall be delivered to DEF at least fifteen (15) calendar days prior to the start of any interconnection work. At a minimum, the RF/QF Insurance shall contain (a) an endorsement providing coverage, including products liability/completed operations coverage for the term of this Contract, and (b) premises and operations liability, (c) a broad form contractual liability endorsement covering liabilities (i) which might arise under, or in the performance or nonperformance of, this Contract or (ii) caused by operation of the Facility or any of the RF/QF's equipment. Without limiting the foregoing, the RF/QF Insurance must be reasonably acceptable to DEF. Any premium assessment or deductible shall be for the account of the RF/QF and not DEF.

- 17.2** The RF/QF Insurance for liability shall have a minimum limit of five million dollars (\$5,000,000.00) per occurrence for bodily injury (including death) or property damage. This liability limit can be met by any combination of commercial general and excess liability insurance policies.
- 17.3** To the extent that the RF/QF Insurance is on a “claims made” basis, the retroactive date of the policy(ies) shall be the Effective Date of this Contract or an earlier date. Furthermore, to the extent the RF/QF Insurance is on a “claims made” basis, the RF/QF’s duty to provide insurance coverage shall survive the termination of this Contract until the expiration of the maximum statutory period of limitations in the State of Florida for actions based in contract or in tort. To the extent the RF/QF Insurance is on an “occurrence” basis, such insurance shall be maintained in effect at all times by the RF/QF during the term of this Contract.
- 17.4** The RF/QF shall provide DEF with a copy of any material communication or notice related to the RF/QF Insurance within ten (10) Business Days of the RF/QF’s receipt or issuance thereof.
- 17.5** DEF shall be designated as an additional named insured under the RF/QF Insurance (except Workers’ Compensation). The RF/QF Insurance shall be primary to any coverage maintained by DEF and provide, where permitted by law, waiver of any rights of subrogation against DEF. Any deductibles or retentions shall be the sole responsibility of RF/QF. RF/QF’s compliance with these provisions and the limits of insurance specified herein shall not constitute a limitation of RF/QF’s liability or otherwise affect RF/QF’s indemnification obligations pursuant to this Contract. Any failure to comply with all of these provisions shall not be deemed a waiver of any rights of DEF under this Contract or with respect to any insurance coverage required hereunder. DEF may request the RF/QF to provide a copy of any or all of its required insurance policies, including endorsements in which DEF is included as an additional insured for any claims filed relative to this Contract.

18. Force Majeure

- 18.1** “Force Majeure” is defined as an event or circumstance that is not reasonably foreseeable, is beyond the reasonable control of and is not caused by the negligence or lack of due diligence of the Party claiming Force Majeure or its contractors or suppliers and adversely affects the performance by that Party of its obligations under or pursuant to this Contract. Such events or circumstances may include, but are not limited to, actions or inactions of civil or military authority (including courts and governmental or administrative agencies), acts of God, war, riot or insurrection, blockades, embargoes, sabotage, epidemics, explosions and fires not originating in the Facility or caused by its operation, hurricanes, floods, strikes, lockouts or other labor disputes or difficulties (not caused by the failure of the affected party to comply with the terms of a collective bargaining agreement). Force Majeure shall not be based on (i) the loss of DEF’s markets; (ii) DEF’s economic inability to use or resell the Capacity and Energy purchased hereunder; or (iii) RF/QF’s ability to sell the Capacity or Energy at a price greater than the price herein. Equipment breakdown or inability to use equipment caused by its design, construction, operation, maintenance or inability to meet regulatory standards, or otherwise caused by an event originating in the control of a Party, or a Party’s failure to obtain on a timely basis and maintain a necessary permit or other regulatory approval, shall not be considered an event of Force Majeure, unless such Party can reasonably demonstrate, to the reasonable satisfaction of the non-claiming Party, that the event was not reasonably foreseeable, was beyond the Party’s reasonable control and was not caused by the negligence or lack of due diligence of the Party claiming Force Majeure or its agents, contractors or suppliers and adversely affects the performance by that Party of its obligations under or pursuant to this Contract.
- 18.2** Except as otherwise provided in this Contract, each Party shall be excused from performance when its nonperformance was caused, directly or indirectly by an event of Force Majeure.
- 18.3** In the event of any delay or nonperformance resulting from an event of Force Majeure, the Party claiming Force Majeure shall notify the other Party in writing within five (5) Business Days of the occurrence of the event of Force Majeure, of the nature cause, date of commencement thereof and the anticipated extent of such delay, and shall indicate whether any deadlines or date(s), imposed hereunder may be affected thereby. The suspension of performance shall be of no greater scope and of no greater duration than the cure for the Force Majeure requires. A Party claiming Force Majeure shall not be entitled to any relief therefore unless and until conforming notice is provided. The Party claiming Force Majeure shall notify the other Party of the cessation of the event of Force Majeure or of the conclusion of the affected Party’s cure for the event of Force Majeure in either case within two (2) Business Days thereof.

- 18.4** The Party claiming Force Majeure shall use its best efforts to cure the cause(s) preventing its performance of this Contract; provided, however, the settlement of strikes, lockouts and other labor disputes shall be entirely within the discretion of the affected Party and such Party shall not be required to settle such strikes, lockouts or other labor disputes by acceding to demands which such Party deems to be unfavorable.
- 18.5** If the RF/QF suffers an occurrence of an event of Force Majeure that reduces the generating capability of the Facility below the Committed Capacity, the RF/QF may, upon notice to DEF temporarily adjust the Committed Capacity as provided in Sections 18.6 and 18.7. Such adjustment shall be effective the first calendar day immediately following DEF's receipt of the notice or such later date as may be specified by the RF/QF. Furthermore, such adjustment shall be the minimum amount necessitated by the event of Force Majeure.
- 18.6** If the Facility is rendered completely inoperative as a result of Force Majeure, the RF/QF shall temporarily set the Committed Capacity equal to 0 kW until such time as the Facility can partially or fully operate at the Committed Capacity that existed prior to the Force Majeure. If the Committed Capacity is 0 kW, DEF shall have no obligation to make Capacity Payments hereunder.
- 18.7** If, at any time during the occurrence of an event of Force Majeure or during its cure, the Facility can partially or fully operate, then the RF/QF shall temporarily set the Committed Capacity at the maximum capability that the Facility can reasonably be expected to operate.
- 18.8** Upon the cessation of the event of Force Majeure or the conclusion of the cure for the event of Force Majeure, the Committed Capacity shall be restored to the Committed Capacity that existed immediately prior to the Force Majeure. Notwithstanding any other provisions of this Contract, upon such cessation or cure, DEF shall have right to require a Committed Capacity Test to demonstrate the Facility's compliance with the requirements of this Section 18.8. Any such Committed Capacity Test required by DEF shall be additional to any Committed Capacity Test under Section 7.4.
- 18.9** During the occurrence of an event of Force Majeure and a reduction in Committed Capacity under Section 18.5 all Monthly Capacity Payments shall reflect, pro rata, the reduction in Committed Capacity, and the Monthly Capacity Payments will continue to be calculated in accordance with the pay-for-performance provisions in Appendix A.

20.15 No Waiver

No waiver of any of the terms and conditions of this Contract shall be effective unless in writing and signed by the Party against whom such waiver is sought to be enforced. Any waiver of the terms hereof shall be effective only in the specific instance and for the specific purpose given. The failure of a Party to insist, in any instance, on the strict performance of any of the terms and conditions hereof shall not be construed as a waiver of such Party's right in the future to insist on such strict performance.

20.16 Set-Off

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

20.17 Change in Environmental Law or Other Regulatory Requirements

- (a) As used herein, "Change(s) in Environmental Law or Other Regulatory Requirements" means the enactment, adoption, promulgation, implementation, or issuance of, or a new or changed interpretation of, any statute, rule, regulation, permit, license, judgment, order or approval by a governmental entity that specifically addresses environmental or regulatory issues and that takes effect after the Effective Date.
- (b) The Parties acknowledge that Change(s) in Environmental Law or Other Regulatory Requirements could significantly affect the cost of the Avoided Unit ("Avoided Unit Cost Changes") and agree that, if any such change(s) should affect the cost of the Avoided Unit more than the Threshold defined in Section 20.17(c) below, the Party affected by such change(s) may avail itself of the remedy set forth in Section 20.17(d) below as its sole and exclusive remedy.
- (c) The Parties recognize and agree that certain Change(s) in Environmental Law or Other Regulatory Requirements may occur that do not rise to a level that the Parties desire to impact this Contract. Accordingly, the Parties agree that for the purposes of this Contract, such change(s) will not be deemed to have occurred unless the change in Avoided Cost resulting from such change(s) exceed a mutually agreed upon amount. This mutually agreed upon amount is attached to this Contract in Appendix E.



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

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

RF/QF

Signature

Print Name

Title

Date

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

DUKE ENERGY FLORIDA, INC.

Signature

Print Name

Title

Date

TABLE 3
EXAMPLE MONTHLY CAPACITY PAYMENT IN \$/kW/MONTH
DEF'S June 1, 2021 Undesignated CC
Renewable or Qualifying Facility Standard Offer Contract Avoided Capacity Payments

(\$/kW/MONTH)

Contract Year	<u>Option A</u>	<u>Option B</u>	<u>Option C</u>	<u>Option D</u>
	Normal Capacity Payment Starting on the Avoided Unit In-Service Date	Early Capacity Payment Starting on the Exemplary Capacity Payment Date	Levelized Capacity Payment Starting on the Avoided Unit In-Service Date	Early Levelized Capacity Payment Starting on the Exemplary Capacity Payment Date
2015				
2016		5.46		6.34
2017		5.60		6.35
2018		5.74		6.36
2019		5.88		6.37
2020		6.03		6.38
2021	9.97	6.18	11.06	6.39
2022	10.21	6.34	11.08	6.40
2023	10.47	6.49	11.09	6.41
2024	10.73	6.66	11.11	6.42
2025	11.00	6.82	11.13	6.43
2026	11.27	6.99	11.15	6.44
2027	11.56	7.17	11.16	6.46
2028	11.85	7.35	11.18	6.47
2029	12.14	7.53	11.20	6.48
2030	12.45	7.72	11.22	6.49
2031	12.76	7.91	11.24	6.50

- The Capacity Payment schedules contained in this Contract assume a term of ten years from the Avoided Unit In-Service Date. In the event the RF/QF requests a term greater than ten years but less than the Avoided Unit Life then DEF shall prepare a schedule of Capacity Payments for the requested term. Such Capacity Payment rates shall be calculated utilizing the value-of-deferral methodology described in FPSC Rule 25-17.0832(6).

For any period during which energy is delivered by the RF/QF to DEF, the Firm Energy Rate in cents per kilowatt hour (¢/kWh) shall be the following on an hour-by-hour basis: the lesser of (a) the As-Available Energy Rate and (b) the Avoided Unit Energy Cost. The Avoided Unit Energy Cost, in cents per kilowatt - hour (¢/kWh) shall be defined as the product of (a) the Avoided Unit Fuel Cost and (b) the Avoided Unit Heat Rate; plus (c) the Avoided Unit Variable O&M.

For the purposes of this agreement, the Avoided Unit Fuel Cost shall be determined from gas price published in Platts Inside FERC, Gas Market Report, first of the month posting for Florida Gas Transmission ("FGT") Zone 3, plus other charges, surcharges and percentages that are in effect from time to time.

The Parties may mutually agree to fix a minority portion of the base energy payments associated with the Avoided Unit and amortize that fixed portion, on a present value basis, over the term of the Contract. Such fixed energy payments may, at the option of the RF/QF, start as early as the Avoided Unit In-Service Date. For purposes of this paragraph, "base energy payments associated with the Avoided Unit" means the energy costs of the Avoided Unit to the extent that the Avoided Unit would have been operated. If this option is mutually agreed upon, it will be attached to this Contract in Appendix E.

ESTIMATED AS-AVAILABLE ENERGY COST

For informational purposes only, the estimated incremental avoided energy costs for the next four semi-annual periods are as follows. The following estimates include variable operation and maintenance expenses.

<u>Applicable Period</u>	<u>Average ¢/KWH</u>
April 1, 2014 - September 30, 2014	4.0
October 1, 2014 – March 31, 2015	4.0
April 1, 2015– September 30, 2015	4.1
October 1, 2015 – March 31, 2016	4.1

ESTIMATED UNIT FUEL COST

The estimated unit fuel costs listed below are associated with the Avoided Unit and are based on current estimates of the price of natural gas.

\$/MMBTU

<u>2015</u>	<u>2016</u>	<u>2017</u>	<u>2018</u>	<u>2019</u>	<u>2020</u>	<u>2021</u>	<u>2022</u>	<u>2023</u>
4.44	4.56	5.25	5.75	6.03	6.62	6.93	7.16	7.39

DELIVERY VOLTAGE ADJUSTMENT

DEF's average system line losses are analyzed annually for the prior calendar year, and delivery efficiencies are developed for the transmission, distribution primary, and distribution secondary voltage levels. This analysis is provided in the DEF's semi-annual fuel cost recovery filing with the FPSC in Exhibit Schedule E1. An adjustment factor, calculated as the reciprocal of the appropriate delivery efficiency factor, is applicable to the above determined energy costs if the RF/QF is within DEF's service territory to reflect the delivery voltage level at which RF/QF energy is received by the DEF.

The current delivery voltage adjustment factors are:

<u>Delivery Voltage</u>	<u>Adjustment Factor</u>
Transmission Voltage Delivery	1.0149
Primary Voltage Delivery	1.0249
Secondary Voltage Delivery	1.0639

PERFORMANCE CRITERIA

Payments for firm Capacity are conditioned on the RF/QF's ability to maintain the following performance criteria:

A. Capacity Delivery Date

The Capacity Delivery Date shall be no later than the Required Capacity Delivery Date.

B. Availability and Capacity Factor

The Facility's availability and capacity factor are used in the determination of firm Capacity Payments through a performance based calculation as detailed in Appendix A to the Contract.

SCHEDULE 2
TO RATE SCHEDULE COG-2CAPACITY OPTION PARAMETERS

**FIXED VALUE OF DEFERRAL PAYMENTS -
NORMAL CAPACITY OPTION PARAMETERS**

Where, for one year deferral:

		<u>Value</u>
VAC_m	= DEF's value of avoided capacity and O&M, in dollars per kilowatt per month, during month m;	9.97
K	= present value of carrying charges for one dollar of investment over L years with carrying charges computed using average annual rate base and assumed to be paid at the middle of each year and present valued to the middle of the first year;	1.367
I_n	= total direct and indirect cost, in mid-year dollars per kilowatt including AFUDC but excluding CWIP, of the Avoided Unit with an in-service date of year n;	1613.11
O_n	= total fixed operation and maintenance expense, for the year n, in mid-year dollars per kilowatt per year, of the Avoided Unit;	7.85
i_p	= annual escalation rate associated with the plant cost of the Avoided Unit;	2.50%
i_o	= annual escalation rate associated with the operation and maintenance expense of the Avoided Unit;	2.50%
r	= annual discount rate, defined as DEF's incremental after-tax cost of capital;	6.46%
L	= expected life of the Avoided Unit;	35
n	= year for which the Avoided Unit is deferred starting with the Avoided Unit In-Service Date and ending with the Termination Date.	2021

**FIXED VALUE OF DEFERRAL PAYMENTS -
EARLY CAPACITY OPTION PARAMETERS**

A_m	=	monthly avoided capital cost component of Capacity Payments to be made to the RF/QF starting as early as five years prior to the Avoided Unit In-Service Date, in dollars per kilowatt per month;	5.10
i_p	=	annual escalation rate associated with the plant cost of the Avoided Unit;	2.50%
n	=	year for which early Capacity Payments to a RF/QF are to begin;	2016
F	=	the cumulative present value of the avoided capital cost component of Capacity Payments which would have been made had Capacity Payments commenced with the anticipated in-service date of the Avoided Unit and continued for a period of 10 years;	660.53
r	=	annual discount rate, defined as DEF's incremental after-tax cost of capital;	6.46%
t	=	the Term, in years, of the Contract for the purchase of firm capacity commencing prior to the in-service date of the Avoided Unit;	16
G	=	the cumulative present value of the avoided fixed operation and maintenance expense component of Capacity Payments which would have been made had Capacity Payments commenced with the anticipated in-service date of the Avoided Unit and continued until the Termination Date.	46.41

**AMENDED STANDARD OFFER CONTRACT
(Legislative format)**

Tariff Sheets:

9.403, 9.404, 9.406, 9.407, 9.408, 9.409, 9.410, 9.412, 9.413, 9.415, 9.416,
9.418, 9.419, 9.420, 9.421, 9.422, 9.423, 9.424, 9.425, 9.426, 9.427, 9.428,
9.429, 9.430, 9.431, 9.432, 9.439, 9.441, 9.455, 9.457, 9.458, 9.467 and 9.468.

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18. Force Majeure	9.431
19. Representations, Warranties, and Covenants of RF/QF	9.433
20. General Provisions	9.435
Execution	9.441

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

THIS STANDARD OFFER CONTRACT FOR THE PURCHASE OF FIRM CAPACITY AND ENERGY (hereinafter referred to as the "Contract") is made and entered this ____ day of _____, ____ (hereinafter referred to as the "Execution Date"), by and between _____ (hereinafter the Renewable Energy Provider/Qualifying Facility ("RF/QF")), and Duke Energy Florida, Inc. d/b/a Duke Energy (hereinafter "DEFDEF"), a private utility corporation organized and existing under the laws of the State of Florida. The RF/QF and DEFDEF shall be individually identified herein as the "Party" and collectively as the "Parties". This Contract contains five Appendices which are incorporated into and made part of this Contract: Appendix A: Monthly Capacity Payment Calculation; Appendix B: Termination Fee; Appendix C: Detailed Project Information; Appendix D: Rate Schedule COG-2; Appendix E: Agreed Upon Payment Schedules and Other Mutual Agreements; and Appendix F: Florida Public Service Commission ("FPSC") Rules 25-17.080 through 25-17.310, F.A.C.

WITNESSETH:

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

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

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

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

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

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

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

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

“Business Day” means any day except a day upon which banks licensed to operate in the State of Florida are authorized, directed or permitted to close, Saturday, Sunday or a weekday that is observed as a public holiday in the State of Florida.

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

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

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

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

“Committed Capacity” or “CC” means the capacity in MW that the RF/QF commits to sell to DEF, the amount of which shall be determined in accordance with Section 7 ~~and Appendix D~~.

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

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

“Completed Permits Date” means the date by which the RF/QF must complete licensing, and certification, and obtain all federal, state and local governmental, environmental, and licensing approvals required to initiate construction of the Facility including Qualifying Facility status. This date is specified in Section 4.

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

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

“Contract” means this standard offer contract for the purchase of Firm Capacity and Energy from a Renewable Energy Producer or Qualifying Facility with a nameplate capacity of less than 100 kW.

“Creditworthy” with respect to a Party or its credit support provider, as applicable, means a party is rated at least BBB by at least two (2) of the three (3) following rating agencies Standard & Poor’s (S&P), or at least Baa3 by Moody’s Investor Services (Moody’s) and Fitch Rating Services (Fitch). Rating shall be the unsecured, senior long-term debt or deposit obligations rating, (not supported by third party credit enhancement) or the issuer rating will be used if not available. Both ratings (if company is only rated by 2 of the 3 agencies) or at least two (2) of the three (3) (if company is rated by all three agencies) must be (i) BBB or greater from S&P (ii) Baa3 or greater from Moody’s (iii) BBB or greater from Fitch.

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

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

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

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

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

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

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

“Dispute” shall have the meaning assigned to it in Section 20.9.

“Drop Dead Date” means the date which is twelve (12) months following the Execution Date.

“Eastern Prevailing Time” or “EPT” means the time in effect in the Eastern Time Zone of the United States of America, whether Eastern Standard Time or Eastern Daylight Savings Time.

“Effective Date” has the meaning assigned to it in Section 5.

“Electrical Interconnection Point” means the physical point at which the Facility is connected with the Transmission System or, if RF/QF interconnects with a Transmission System other than DEF’s, DEF’s interconnection with the Transmission Provider’s Transmission System, or such other physical point on which RF/QF and DEF may agree.



SECTION No. IX
~~FIRST-SECOND~~ REVISED SHEET NO. 9.410407
CANCELS ORIGINAL ~~FIRST REVISED~~ SHEET NO.
9.410407

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

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

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

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

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

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

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

“Facility” means all equipment, as described in this Contract, used to produce electric energy and, and all equipment that is owned or controlled by the RF/QF required for parallel operation with the Transmission System. In the case of a cogenerator the Facility includes all equipment that is owned or controlled by the RF/QF to produce useful thermal energy through the sequential use of energy.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“Material Adverse Change” means as to ~~DEF, that DEF or DEF Guarantor, if applicable, or, as to RF/QF, that RF/QF or RF/QF Guarantor, if applicable,~~ any of the following events; (a) ~~such party the RF/QF or its guarantor, if applicable,~~ is no longer Creditworthy or (b) ~~the party of Party's the RF/QF or its guarantor, if applicable,~~ defaults on an aggregate of fifty million dollars (\$50,000,000) or five percent (5%) of equity, whichever is less.

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

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

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

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

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

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

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

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

“Qualifying Facility” or “QF” means a cogenerator, small power producer, or non-utility generator that has been certified or self-certified by the FERC as meeting certain ownership, operating and efficiency criteria established by the Federal Energy Regulatory Commission pursuant to the Public Utility Regulatory Policies Act of 1978 (“PURPA”), the criteria for which are currently set forth in 18 C.F.R. § 292, *et seq.* (2006), Section 210 of PURPA, 16 U.S.C. § 824a-3 (2005), 16 U.S.C. 796 *et seq.* (2006), and Section 1253 of EPAct 2005, Pub. L. No. 109-58, § 1253, 119 Stat. 594 (2005) or, alternatively, analogous provisions under the laws of the State of Florida.

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

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

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

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

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

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

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

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

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



SECTION No. IX
FIRST ~~SECOND~~ REVISED SHEET NO. 9.412
CANCELS ORIGINAL ~~FIRST REVISED~~ SHEET NO.
9.412

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

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

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

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

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

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

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

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

“Termination Date” means the date upon which this Contract terminates unless terminated earlier in accordance with the provisions hereof. This date is specified in Section 4.

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

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

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

“Transmission System” means the system of electric lines comprised wholly or substantially of high voltage lines, associated system protection, system stabilization, voltage transformation, and capacitance, reactance and other electric plant used for conveying electricity from a generating station to a substation, from one generating station to another, from one substation to another, or to or from any Electrical Interconnection Point or to ultimate consumers and shall include any interconnection owned by the Transmission Provider or DEF, but shall in no event include any lines which the Transmission Provider has specified to be part of the Distribution System except for any distribution facilities required to accept capacity and energy from the Facility.

3. Term of Contract

Except as otherwise provided herein, this Contract shall become effective immediately upon its execution by the Parties and shall end at 12:01 a.m. on the Termination Date, (the "Term") unless terminated earlier in accordance with the provisions hereof. Notwithstanding the foregoing, if the Capacity Delivery Date of the Facility is not accomplished by the RF/QF before the Required Capacity Delivery Date ~~either the Avoided Unit In-Service Date or an earlier date in Appendix E~~ (or such later date as may be permitted by DEF pursuant to Section 7), this Contract shall be rendered null and void and DEF's shall have no obligations under this Contract.

4. Minimum Specifications and Milestones

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

Avoided Unit	Undesignated CC
Avoided Unit Capacity	793 MW
Avoided Unit In-Service Date	June 1, 2021
Avoided Unit Heat Rate	6,755 <u>6,741</u> BTU/kWh
Avoided Unit Variable O&M	0.532 <u>0.545</u> ¢ per kWh in mid- 2013 <u>2014</u> dollars escalating annually at 2.50%
Avoided Unit Life	35 years
Capacity Payments begin	Avoided Unit In-Service Date unless Option B, or D is selected or amended in Appendix E
Termination Date	May 31, 2031 (10 years) unless amended in Appendix E
Minimum Performance Standards – On Peak Availability Factor*	87%
Minimum Performance Standards – Off Peak Availability Factor	87%
Minimum Availability Factor Required to qualify for a Capacity payment	67%
Expiration Date	April 1, 2014 <u>2015</u>
Completed Permits Date	June 1, 2016 <u>2017</u>
Exemplary Early Capacity Payment Date	January 1, 2014 <u>2016</u>

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

5. Conditions Precedent

- (a) Unless otherwise waived in writing by DEF, on or before the Drop Dead Date, RF/QF shall satisfy the following Conditions Precedent:
- (i) RF/QF shall have obtained firm transmission service necessary to deliver Capacity and energy from the Facility to the Electrical Interconnection Point, in a form and substance satisfactory to RF/QF in its sole discretion;
 - (ii) RF/QF shall have obtained the Project Consents and any other Consents for which it is responsible under the terms hereof in a form and substance satisfactory to RF/QF in its sole discretion;
 - (iii) RF/QF shall have entered into Financing Documents relative to the construction of the Facility and have achieved Financial Closing in a form and substance satisfactory to RF/QF in its sole discretion;
 - (iv) RF/QF shall have entered into the Project Contracts in a form and substance satisfactory to RF/QF in its sole discretion;
 - (v) RF/QF shall have obtained insurance policies or coverage in compliance with Section 17;
 - (vi) Each Party shall have delivered to the other Party (i) a copy of its constitutional documents (certified by its corporate secretary as true, complete and up-to-date) and (ii) a copy of a corporate resolution approving the terms of this Contract and the transactions contemplated hereby and authorizing one or more individuals to execute this Contract on its behalf (such copy to have been certified by its corporate representative as true, complete and up-to-date);
 - (vii) ~~in the event the RF/QF is a Qualifying Facility, RF/QF shall have~~
obtained~~obtaining~~ Qualifying Facility status from either the FPSC or FERC.
- (b) Promptly upon satisfaction (or waiver in writing) of the Conditions Precedent to be satisfied, the Party having satisfied the same shall deliver to the other Party a certificate evidencing such satisfaction. Subject to there being no Event of Default which has occurred and/or is continuing as of the date upon which the last of such certificates is delivered, the date of such last certificate shall constitute the effective date of this Contract (the "Effective Date").
- (c) Unless all Conditions Precedent are satisfied on or before the Drop Dead Date or such Conditions Precedent are waived in writing, this Contract shall terminate on such date and neither Party shall have any further liability to the other Party hereunder.
- (d) RF/QF shall achieve the Capacity Delivery Date on or before the Required Capacity Delivery Date~~the Avoided Unit In Service Date or an earlier date in Appendix E.~~

7. Committed Capacity/Capacity Delivery Date

- 7.1 In the event that the RF/QF elects to make no commitment as to the quantity or timing of its deliveries to DEF, then its Committed Capacity as defined in the following Section 7.2 shall be zero (0) MW. If the Committed Capacity is zero (0) MW, Sections 7.2 through Section 7.7 and all of Section 8 shall not apply.
- 7.2 If the RF/QF commits to sell capacity to DEF, the amount of which shall be determined in accordance with this Section 7 and ~~Appendix D~~. Subject to Section 7.4, the Committed Capacity is set at _____ kW, with an expected Capacity Delivery Date on or before the ~~Avoided Unit In-Service Date or an earlier date in Appendix E~~ Required Capacity Delivery Date.
- 7.3 Capacity testing of the Facility (each such test a Committed Capacity Test) shall be performed in accordance with the procedures set forth in Section 8. The Demonstration Period for the first Committed Capacity Test shall commence no earlier than ninety (90) days before the ~~expected~~ Required Capacity Delivery Date and testing must be completed before the Avoided Unit In-Service Date or an earlier date in Appendix E. The first Committed Capacity Test shall not be successfully completed unless the Facility demonstrates a Capacity of at least one hundred percent (100%) of the Committed Capacity set forth in Section 7.2. Subject to Section 8.1, the RF/QF may schedule and perform up to three (3) Committed Capacity Tests to satisfy the requirements of the Contract with respect to the first Committed Capacity Test.
- 7.4 In addition to the first Committed Capacity Test, DEF shall have the right to require the RF/QF, after notice of no less than ten (10) Business Days prior to such proposed event, to validate the Committed Capacity by means of a Committed Capacity Test at any time, up to two (2) times per year, the results of which shall be provided to DEF within seven (7) calendar days of the conclusion of such test. On and after the date of such requested Committed Capacity Test, and until the completion of a subsequent Committed Capacity Test, the Committed Capacity shall be set at the lower of the Capacity tested or the Committed Capacity as set forth in Section 7.2. Provided however, any such second test requested within a twelve (12) month period must be for cause.

- 7.5 Notwithstanding anything contrary to the terms hereof, the Committed Capacity may not exceed the amount set forth in Section 7.2 without the consent of DEF, which consent shall be granted in DEF's sole discretion.
- 7.6 Unless Option B or D as contained in Appendix D or Appendix E is chosen by RF/QF, DEF shall make no Capacity Payments to the RF/QF prior to the Avoided Unit In-Service Date.
- 7.7 The RF/QF shall be entitled to receive Capacity Payments beginning on the Capacity Delivery Date, provided the Capacity Delivery Date occurs before the ~~Avoided Unit In-Service Date or an earlier date in Appendix E~~ Required Capacity Delivery Date (or such later date permitted by DEF). If the Capacity Delivery Date does not occur before the ~~Avoided Unit In-Service Date or an earlier date in Appendix E~~ Required Capacity Delivery Date, DEF shall immediately be entitled to draw down the Completion/Performance Security in full.

8. Testing Procedures

- 8.1 The Committed Capacity Test must be completed successfully within the Demonstration Period, which period, including the approximate start time of the Committed Capacity Test, shall be selected and scheduled by the RF/QF by means of a written notice to DEF delivered at least thirty (30) calendar days prior to the start of such period. The provisions of the foregoing sentence shall not apply to any Committed Capacity Test ordered by DEF under any of the provisions of this Contract. DEF shall have the right to be present onsite to monitor firsthand any Committed Capacity Test required or permitted under this Contract.
- 8.2 The Committed Capacity Test results shall be based on a test period of twenty-four (24) consecutive hours (the "Committed Capacity Test Period") at the highest sustained net kW rating at which the Facility can operate without exceeding the design operating conditions, temperature, pressures, and other parameters defined by the applicable manufacturer(s) for steady state operations at the Facility. The Committed Capacity Test Period shall commence at the time designated by the RF/QF pursuant to Section 8.1 or at such time requested by DEF pursuant to Section 7.4; provided, however, that the Committed Capacity Test Period may commence earlier than such time in the event that DEF is notified of, and consents to, such earlier time.
- 8.3 Normal station service use of unit auxiliaries, including, without limitation, cooling towers, heat exchangers, and other equipment required by law, shall be in service during the Committed Capacity Test Period.
- 8.4 The Capacity of the Facility shall be the minimum average hourly net output in kW (generator output minus auxiliary) measured over the Committed Capacity Test Period.

- 8.5 The Committed Capacity Test shall be performed according to standard industry testing procedures for the appropriate technology of the RF/QF.
- 8.6 The results of any Committed Capacity Test, including all data related to Facility operation and performance during testing, shall be submitted to DEF by the RF/QF within seven (7) calendar days of the conclusion of the Committed Capacity Test. The RF/QF shall certify that all such data is accurate and complete.

9. Payment for Electricity Produced by the Facility

9.1 Energy

- 9.1.1 DEF agrees to pay the RF/QF for energy produced by the Facility and delivered to DEF in accordance with the rates and procedures contained in DEF's approved Rate Schedule COG-1, as it may be amended from time to time if the Committed Capacity pursuant to Section 7.2 is set to zero. If the Committed Capacity is greater than zero MW, then DEF agrees to pay the RF/QF for energy produced by the Facility and delivered to DEF in accordance with the rates and procedures contained in Appendix D, as it may be amended from time to time. The Parties agree that this Contract shall be subject to all of the provisions contained in Rate Schedule COG-1 or Appendix D whichever applies as approved and on file with the FPSC.
- 9.1.2 DEF may, at its option, limit deliveries under this Contract to 110% of the Committed Capacity as set forth in Section 7. In the event that DEF chooses to limit deliveries, any energy in excess of 110% of the Committed Capacity will be paid for at the rates defined in Rate Schedule COG-1 and shall not be included in the calculations in Appendix A hereto.

9.2 Capacity

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

9.3 Payments for Energy and Capacity

9.3.1 Payments due the RF/QF will be made monthly, and normally by the twentieth Business Day following the end of the billing period. The kilowatt-hours sold by the RF/QF and the applicable avoided energy rate at which payments are being made shall accompany the payment to the RF/QF.

9.3.2 Payments to be made under this Contract shall, for a period of not longer than two (2) years, remain subject to adjustment based on billing adjustments due to error or omission by either Party, provided that such adjustments have been agreed to between the Parties.

10. Electricity Production and Plant Maintenance Schedule

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

10.2 By October 31 of each calendar year, DEF shall notify the RF/QF in writing whether the requested scheduled maintenance periods in the detailed plan are acceptable. If DEF does not accept any of the requested scheduled maintenance periods, DEF shall advise the RF/QF of the time period closest to the requested period(s) when the outage(s) can be scheduled. The RF/QF shall only schedule outages during periods approved by DEF, and such approval shall not be unreasonably withheld. Once the schedule for the detailed plan has been established and approved, either Party requesting a subsequent change in such schedule, except when such change is due to Force Majeure, must obtain approval for such change from the other Party. Such approval shall not be unreasonably withheld or delayed. Scheduled maintenance outage days shall be limited to twenty four days per calendar year. In no event shall maintenance periods be scheduled during the following periods: June 1 through September 15 and December 1 through and including the last day of February.

10.3 The RF/QF shall comply with reasonable requests by DEF regarding day-to-day and hour-by-hour communication between the Parties relative to electricity production and maintenance scheduling.

- 10.4** The Parties recognize that the intent of the availability factor in Section 4 of this Contract includes an allowance for scheduled outages, forced outages and forced reductions in the output of the Facility. Therefore, the RF/QF shall provide DEF with notification of any forced outage or reduction in output which shall include the time and date at which the forced outage or reduction occurred, a brief description of the cause of the outage or reduction and the time and date when the forced outage or reduction ceased and the Facility was able to return to normal operation. This notice shall be provided to DEF within seventy-two (72) hours of the end of the forced outage or reduction.

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

10.5 Dispatch and Control

10.5.1 Power supplied by the RF/QF hereunder shall be in the form of three-phase 60 hertz alternating current, at a nominal operating voltage of _____ volts (_____ kV) and power factor dispatchable and controllable in the range of 90% lagging to 90% leading as measured at the interconnection point to maintain system operating parameters, including power factor, as specified from time to time by DEF.

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

- 10.5.3** If the Facility is separated from the DEF system for any reason, under no circumstances shall the RF/QF reconnect the Facility to DEF's system without first obtaining DEF'S specific approval.
- 10.5.4** During the term of this Contract, the RF/QF shall employ qualified personnel for managing, operating and maintaining the Facility and for coordinating such with DEF. The RF/QF shall ensure that operating personnel are on duty at all times, twenty-four (24) hours a calendar day and seven (7) calendar days a week. Additionally, during the term of this Contract, the RF/QF shall operate and maintain the Facility in such a manner as to ensure compliance with its obligations hereunder and in accordance with applicable law and Prudent Utility Practices.
- 10.5.5** DEF shall not be obligated to purchase, and may require curtailed or reduced deliveries of energy to the extent allowed under FPSC Rule 25-17.086 and under any curtailment plan which DEF may have on file with the FPSC from time to time.
- 10.5.6** During the term of this Contract, the RF/QF shall maintain sufficient fuel on the site of the Facility to deliver the capacity and energy associated with the Committed Capacity for an uninterrupted seventy-two-(72) hour period. At DEF's request, the RF/QF shall demonstrate this capability to DEF's reasonable satisfaction. During the term of this Contract, the RF/QF's output shall remain within a band of plus or minus ten percent (10%) of the daily output level or levels specified by the plant operator, in ninety percent (90%) of all operating hours under normal operating conditions. This calculation will be adjusted to exclude forced outage periods and periods during which the RF/QF's output is affected by a Force Majeure event.

11. Completion/Performance Security

- 11.1** Simultaneous with the execution of this agreement ~~Contract~~ RF/QF shall deliver to DEF Eligible Collateral in an amount equal to \$30.00/kw of Committed Capacity as Completion/Performance Security~~according to Table 2. RF/QF's Performance Security shall be maintained throughout the Term although the amount of Eligible Collateral shall be adjusted from time to time in accordance with Table 2 and Section 11.4. The listed amounts are considered the initial amounts and use 2013 as the Base Year, with all amounts expressed in US Dollars.~~

~~Note: The amounts in the following Table are for 2013 and are subject to change based on utility cost estimates for any year subsequent to the Base Year.~~

TABLE 2

Credit Class	Amount per MW Years 1—5	Amount per MW Years 6— Termination Date
A- and Above	\$15,000	\$5,000
BBB+ to BBB	\$70,000	\$55,000
BBB-	\$110,000	\$95,000
Below BBB-	\$160,000	\$145,000

11.2 — In the event that a Material Adverse Change occurs in respect of RF/QF, then within two (2) Business Day(s) RF/QF shall deliver to DEF Supplemental Eligible Collateral equal to 50 percent of the current Eligible Collateral amount, provided however, that in the DEF's sole discretion, based on a review of the overall circumstances of RF/QF's Material Adverse Change, the total of the Eligible Collateral and the Supplemental Eligible Collateral may be reduced but in no event shall the amount be less than the Base Performance Security Amount.

11.4 — Performance Security Annual Adjustments — The RF/QF Performance Security shall be adjusted on an annual basis beginning January 1, 2014 and each year of during the term of the Agreement. The values in Table 2 will be adjusted using the change in the Gross Domestic Price Implicit Price Deflator (GDPIPD) between the Base Year and each year during the term as reported in the Survey of Current Business published in January each year and revised thereafter, by the Bureau of Economic Analysis, United States Department of commerce, Washington, D.C. using the following formula: Current Performance Security amount (CPSA) multiplied by one plus the change in the GDPIPD, $(CPSA \times (1 + \Delta GDPIPD))$.

11.52 Replacement Collateral, Release of Collateral — Upon any reduction of the amount of RF/QF Performance Security pursuant to Section 11.2 or 11.3 DEF thereof shall upon two (2) Business Days written request by the RF/QF release any Eligible or Supplemental Eligible Collateral that is no longer required. The choice of the type of Eligible Collateral by the RF/QF may be selected from time to time by the RF/QF and upon receipt of substitute Eligible Collateral, DEF shall promptly release such Eligible Collateral. Following any termination of this agreement Contract, the Parties shall mutually agree to a final settlement of all obligations under this Agreement Contract which such period shall not exceed 90 days from such termination date unless extended by mutual agreement between the Parties. After such settlement, any remaining Eligible Collateral posted by the RF/QF that has not been drawn upon by DEF pursuant to its rights under this Contract shall be returned to the RF/QF. Any dispute between the Parties regarding such final settlement shall be resolved according to applicable procedures set forth in Section 20.9.

11.3 Draws, Replenishment - DEF may draw upon Eligible Collateral provided by the RF/QF following the occurrence of an Event of Default or pursuant to the other provisions of this Contract in order to recover any damages to which DEF is entitled to under this Contract. In the event of such a draw then, except in the circumstance when this Contract otherwise terminates, the RF/QF shall within five (5) Business Days replenish the Eligible Collateral to the full amounts required.

~~11.6~~ — Draws, Replenishment — DEF may draw upon Eligible Collateral or Supplemental Eligible Collateral provided by the RF/QF following the occurrence of an Event of Default or pursuant to the other provisions of this Agreement in order to recover any damages to which DEF is entitled to under this Contract. In the event of such a draw then, except in the circumstance when this Contract otherwise terminates, the RF/QF shall within two (2) Business Days replenish the Eligible Collateral or Supplemental Eligible Collateral to the full amounts required by Table 2.

11.4 In the event that the (a) Capacity Delivery Date occurs before the Required Capacity Delivery Date and (b) the ACBF is equal to or greater than 87% for the first twelve (12) months following the Capacity Delivery Date then DEF will return the Completion/Performance Security to the RF/QF within ninety (90) days of the first anniversary of the Capacity Delivery Date. In the event that the Capacity Delivery Date does not occur before the Required Capacity Delivery Date then DEF shall immediately be entitled to draw down the Completion/Performance Security in full. In the event that the ACBF is less than 87% for any of the first twelve (12) months following the Capacity Delivery Date then DEF shall retain the Completion/Security until the ACBF is equal to or greater than 87% for 12 consecutive months. Upon the completion of twelve (12) consecutive months with the ACBF greater than or equal to 87% then DEF will return the Completion/Performance Security within ninety (90) days.

11.7 Reporting - RF/QF shall promptly notify DEF of any circumstance that results in RF/QF's failure to be in compliance with the RF/QF Performance Security Requirements of this Section 11. From time to time, at DEF's written request, RF/QF shall provide DEF with such evidence as DEF may reasonably request, that RF/QF and any RF/QF Guarantor, RF/QF Guarantee, Letter of Credit or Security Account is in Full full Compliance compliance with this agreement Contract.

12. Termination Fee and Security

12.1 In the event that the RF/QF receives Capacity Payments pursuant to Option B, Option C, or Option D of Appendix D or any Capacity Payment schedule in Appendix E that differs from a Normal Capacity Payment Rate as calculated in FPSC Rule 25-17.0832(6)(a), then upon the termination of this Contract, the RF/QF shall owe and be liable to DEF for the Termination Fee. The RF/QF's obligation to pay the Termination Fee shall survive the termination of this Contract. DEF shall provide the RF/QF, on a monthly basis, a calculation of the Termination Fee.

12.1.1 The Termination Fee shall be secured by the RF/QF by: (i) an unconditional, irrevocable, direct pay letter(s) of credit issued by a financial institution(s) with an investment grade credit rating Qualified Institution in form and substance acceptable to DEF (including provisions



(a) permitting partial and full draws and (b) permitting DEF to draw upon such Letter of Credit, in full, if such Letter of Credit is not renewed or replaced at least ~~ten~~ twenty (4020) Business Days prior to its expiration date); (ii) a bond issued to DEF by a financially sound company in form and substance acceptable to DEF in its sole discretion; or (iii) a cash deposit with DEF (any of (i), (ii), or (iii), the "Termination Security"). ~~The specific security instrument selected by the RF/QF for purposes of this Contract is:~~

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

12.1.2 DEF shall have the right and the RF/QF shall be required to monitor the financial condition of (i) the issuer(s) in the case of any Letter of Credit and (ii) the insurer(s), in the case of any bond. In the event the senior debt rating of any issuer(s) or insurer(s) has deteriorated to the extent that they no longer meet the issuer requirements, a level below investment grade, DEF may require the RF/QF to replace the letter(s) of credit or the bond, as applicable. In the event that DEF notifies the RF/QF that it requires such a replacement, the replacement letter(s) of credit or bond, as applicable, must be issued by a financial institution(s) or insurer(s) with an investment-grade acceptable credit rating, and meet the requirements of Section 12.1.1 within thirty (30) calendar days following such notification. Failure by the RF/QF to comply with the requirements of this Section 12.1.2 shall be grounds for DEF to draw in full on any existing Letter of Credit or bond and to exercise any other remedies it may have hereunder.

12.1.3 After the close of each calendar quarter (March 31, June 30, September 30, and December 31) occurring subsequent to the Capacity Delivery Date, upon DEF's issuance of the Termination Fee calculation as described in Section 12.1, the RF/QF must provide DEF, within ten calendar (10) days, written assurance and documentation (the "Security Documentation"), in form and substance acceptable to DEF, that the amount of the Termination Security is sufficient to cover the balance of the Termination Fee through the end of the following quarter. In addition to the foregoing, at any time during the term of this Contract, DEF shall have the right to request and the RF/QF shall be obligated to deliver within five (5) calendar days of such request, such Security Documentation. Failure by the RF/QF to comply with the requirements of this Section 12.1.3 shall be grounds for DEF to draw in full on any existing Letter of Credit or bond or to retain any cash deposit, and to exercise any other remedies it may have hereunder.

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

13. Performance Factor

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

14. Default

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

- (a) the RF/QF changes or modifies the Facility from that provided in Section 2 with respect to its type, location, technology or fuel source, without the prior written approval of DEF;
- (b) after the Capacity Delivery Date, the Facility fails for twelve (12) consecutive months to maintain an Annual Capacity Billing Factor, as described in Appendix A, of at least sixty seven percent (67%);
- (c) the RF/QF fails to satisfy its obligations to maintain sufficient fuel on the site of the Facility to deliver the capacity and energy associated with the Committed Capacity for an uninterrupted seventy-two-(72) hour period under Section 10.5.6 hereof;
- (d) the failure to make when due, any payment required pursuant to this Agreement Contract if such failure is not remedied within three (3) Business Days after written notice.
- (e) either Party, or the entity which owns or controls either Party, ceases the conduct of active business; or if proceedings under the federal bankruptcy law or insolvency laws shall be instituted by or for or against either Party or the entity which owns or controls either Party; or if a receiver shall be appointed for either Party or any of its assets or properties, or for the entity which owns or controls either Party; or if any part of either Party's assets shall be attached, levied upon, encumbered, pledged, seized or taken under any judicial process, and such proceedings shall not be vacated or fully stayed within thirty (30) calendar days thereof; or if either Party shall make an assignment for the benefit of creditors, or admit in writing its inability to pay its debts as they become due;
- (f) the RF/QF fails to give proper assurance of adequate performance as specified under this Contract within thirty (30) calendar days after DEF, with reasonable grounds for insecurity, has requested in writing such assurance;
- (g) the RF/QF fails to achieve licensing, certification, and all federal, state and local governmental, environmental, and licensing approvals required to initiate construction of the Facility by no later than the Completed Permits Date;
- (h) the RF/QF fails to comply with the provisions of Section ~~20.311~~ hereof;
- (i) any of the representations or warranties, including the certification of the completion of the Conditions Precedent, made by either Party in this Contract is false or misleading in any material respect as of the time made;

- (j) if, at any time after the Capacity Delivery Date, the RF/QF reduces the Committed Capacity due to an event of Force Majeure and fails to repair the Facility and reset the Committed Capacity to the level set forth in Section 7.2 (as such level may be reduced by Section 7.4) within twelve (12) months following the occurrence of such event of Force Majeure; or
- (k) either Party breaches any material provision of this Contract not specifically mentioned in this Section 14;
- (l) the RF/QF fails to maintain its status as a Qualifying Facility.

15. Rights in the Event of Default

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

- 15.1.1** immediately terminate this Contract, without penalty or further obligation, except as set forth in Section 15.2, by written notice to the ~~Defaulting Party~~RF/QF, and offset against any payment(s) due from ~~non-Defaulting Party~~DEF to the ~~Defaulting Party~~RF/QF, any monies otherwise due from the ~~Defaulting Party~~RF/QF to the ~~non-Defaulting Party~~DEF;
- 15.1.2** enforce the provisions of the Termination Security requirement pursuant to Section 12 hereof; and
- 15.1.3** exercise any other remedy(ies) which may be available to the ~~non-Defaulting Party~~DEF at law or in equity.

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

16. Indemnification

16.1 DEF and the RF/QF shall each be responsible for its own facilities. DEF and the RF/QF shall each be responsible for ensuring adequate safeguards for other DEF customers, DEF's and the RF/QF's personnel and equipment, and for the protection of its own generating system. Each Party (the "Indemnifying Party") agrees, to the extent permitted by applicable law, to indemnify, pay, defend, and hold harmless the other Party (the "Indemnified Party") and its officers, directors, employees, agents and contractors (hereinafter called respectively, "DEF Entities" and "RF/QF Entities") from and against any and all claims, demands, costs or expenses for loss, damage, or injury to persons or property of the Indemnified Party (or to third parties) directly caused by, arising out of, or resulting from:

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

16.2 Payment by an Indemnified Party to a third party shall not be a condition precedent to the obligations of the Indemnifying Party under Section 16. No Indemnified Party under Section 16 shall settle any claim for which it claims indemnification hereunder without first allowing the Indemnifying Party the right to defend such a claim. The Indemnifying Party shall have no obligations under Section 16 in the event of a breach of the foregoing sentence by the Indemnified Party. Section 16 shall survive termination of this ~~Agreement~~Contract.

17. Insurance

17.1 The RF/QF shall procure or cause to be procured and shall maintain throughout the entire Term of this Contract, a policy or policies of liability insurance issued by an insurer acceptable in the state of Florida on a standard "Insurance Services Office" commercial general liability and/or excess liability form or equivalent and Workers' Compensation in accordance with the statutory requirements of the state of Florida (such policy or policies, collectively, the "RF/QF Insurance"). A certificate of insurance shall be delivered to DEF at least fifteen (15) calendar days prior to the start of any interconnection work. At a minimum, the RF/QF Insurance shall contain (a) an endorsement providing coverage, including products liability/completed operations coverage for the term of this Contract, and (b) premises and operations liability, (c) a broad form contractual liability endorsement covering liabilities (i) which might arise under, or in the performance or nonperformance of, this Contract or (ii) caused by operation of the Facility or any of the RF/QF's equipment. Without limiting the foregoing, the RF/QF Insurance must be reasonably acceptable to DEF. Any premium assessment or deductible shall be for the account of the RF/QF and not DEF.

17. Insurance

- ~~17.1 The RF/QF shall procure or cause to be procured and shall maintain throughout the entire Term of this Contract, a policy or policies of liability insurance issued by an insurer acceptable to DEF on a standard "Insurance Services Office" commercial general liability form (such policy or policies, collectively, the "RF/QF Insurance"). An original certificate of insurance shall be delivered to DEF at least fifteen (15) calendar days prior to the start of any interconnection work. At a minimum, the RF/QF Insurance shall contain (a) an endorsement providing coverage, including products liability/completed operations coverage for the term of this Contract, and (b) a broad form contractual liability endorsement covering liabilities (i) which might arise under, or in the performance or nonperformance of, this Contract or (ii) caused by operation of the Facility or any of the RF/QF's equipment or by the RF/QF's failure to maintain the Facility or the RF/QF's equipment in satisfactory and safe operating condition. Effective at least fifteen (15) calendar days prior to the synchronization of the Facility with DEF's system, the RF/QF Insurance shall be amended to include coverage for interruption or curtailment of power supply in accordance with industry standards. Without limiting the foregoing, the RF/QF Insurance must be reasonably acceptable to DEF. Any premium assessment or deductible shall be for the account of the RF/QF and not DEF.~~
- 17.2** The RF/QF Insurance for liability shall have a minimum limit of one five million dollars (\$15,000,000.00) per occurrence, ~~combined single limit~~, for bodily injury (including death) or property damage. This liability limit can be met by any combination of commercial general and excess liability insurance policies.
- 17.3** To the extent that the RF/QF Insurance is on a "claims made" basis, the retroactive date of the policy(ies) shall be the Effective Date of this Contract or such other an earlier date as may be agreed upon to protect the interests of the DEF Entities and the RF/QF Entities. Furthermore, to the extent the RF/QF Insurance is on a "claims made" basis, the RF/QF's duty to provide insurance coverage shall survive the termination of this Contract until the expiration of the maximum statutory period of limitations in the State of Florida for actions based in contract or in tort. To the extent the RF/QF Insurance is on an "occurrence" basis, such insurance shall be maintained in effect at all times by the RF/QF during the term of this Contract.
- 17.4** ~~The RF/QF Insurance shall provide that it may not be cancelled or materially altered without at least thirty (30) calendar days' written notice to DEF. The RF/QF shall provide DEF with a copy of any material communication or notice related to the RF/QF Insurance within ten (10) Business Days of the RF/QF's receipt or issuance thereof.~~

17.5 DEF shall be designated as an additional named insured under the RF/QF Insurance (except Workers' Compensation). The RF/QF Insurance shall be be primary to any coverage maintained by DEF and provide, where permitted by law, waiver of any rights of subrogation against DEF. Any deductibles or retentions shall be the sole responsibility of RF/QF. RF/QF's compliance with these provisions and the limits of insurance specified herein shall not constitute a limitation of RF/QF's liability or otherwise affect RF/QF's indemnification obligations pursuant to this Contract. Any failure to comply with all of these provisions shall not be deemed a waiver of any rights of DEF under this Contract or with respect to any insurance coverage required hereunder. DEF may request the RF/QF to provide a copy of any or all of its required insurance policies, including endorsements in which DEF is included as an additional insured for any claims filed relative to this Contract.

~~17.5 The RF/QF shall be designated as the named insured and DEF shall be designated as an additional named insured under the RF/QF Insurance. The RF/QF Insurance shall be endorsed to be primary to any coverage maintained by DEF~~

18. Force Majeure

- 18.1** “Force Majeure” is defined as an event or circumstance that is not reasonably foreseeable, is beyond the reasonable control of and is not caused by the negligence or lack of due diligence of the Party claiming Force Majeure or its contractors or suppliers and adversely affects the performance by that Party of its obligations under or pursuant to this ~~agreement~~Contract. Such events or circumstances may include, but are not limited to, actions or inactions of civil or military authority (including courts and governmental or administrative agencies), acts of God, war, riot or insurrection, blockades, embargoes, sabotage, epidemics, explosions and fires not originating in the Facility or caused by its operation, hurricanes, floods, strikes, lockouts or other labor disputes or difficulties (not caused by the failure of the affected party to comply with the terms of a collective bargaining agreement). Force Majeure shall not be based on (i) the loss of DEF’s markets; (ii) DEF’s economic inability to use or resell the Capacity and Energy purchased hereunder; or (iii) RF/QF’s inability to sell the Capacity or Energy at a price greater than the price herein. Equipment breakdown or inability to use equipment caused by its design, construction, operation, maintenance or inability to meet regulatory standards, or otherwise caused by an event originating in the control of a Party, or a Party’s failure to obtain on a timely basis and maintain a necessary permit or other regulatory approval, shall not be considered an event of Force Majeure, unless such Party can reasonably demonstrate, to the reasonable satisfaction of the non-claiming Party, that the event was not reasonably foreseeable, was beyond the Party’s reasonable control and was not caused by the negligence or lack of due diligence of the Party claiming Force Majeure or its agents, contractors or suppliers and adversely affects the performance by that Party of its obligations under or pursuant to this ~~agreement~~Contract.
- 18.2** Except as otherwise provided in this Contract, each Party shall be excused from performance when its nonperformance was caused, directly or indirectly by an event of Force Majeure.
- 18.3** In the event of any delay or nonperformance resulting from an event of Force Majeure, the Party claiming Force Majeure shall notify the other Party in writing within five (5) Business Days of the occurrence of the event of Force Majeure, of the nature cause, date of commencement thereof and the anticipated extent of such delay, and shall indicate whether any deadlines or date(s), imposed hereunder may be affected thereby. The suspension of performance shall be of no greater scope and of no greater duration than the cure for the Force Majeure requires. A Party claiming Force Majeure shall not be entitled to any relief therefore unless and until conforming notice is provided. The Party claiming Force Majeure shall notify the other Party of the cessation of the event of Force



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SECOND-~~THIRD~~ REVISED SHEET NO. 9.431
CANCELS ~~FIRST~~-SECOND REVISED SHEET NO.
9.431

Majeure or of the conclusion of the affected Party's cure for the event of Force Majeure in either case within two (2) Business Days thereof.

- 18.4** The Party claiming Force Majeure shall use its best efforts to cure the cause(s) preventing its performance of this Contract; provided, however, the settlement of strikes, lockouts and other labor disputes shall be entirely within the discretion of the affected Party and such Party shall not be required to settle such strikes, lockouts or other labor disputes by acceding to demands which such Party deems to be unfavorable.
- 18.5** If the RF/QF suffers an occurrence of an event of Force Majeure that reduces the generating capability of the Facility below the Committed Capacity, the RF/QF may, upon notice to DEF temporarily adjust the Committed Capacity as provided in Sections ~~18.5-6~~ and ~~18.67~~. Such adjustment shall be effective the first calendar day immediately following DEF's receipt of the notice or such later date as may be specified by the RF/QF. Furthermore, such adjustment shall be the minimum amount necessitated by the event of Force Majeure.
- 18.6** If the Facility is rendered completely inoperative as a result of Force Majeure, the RF/QF shall temporarily set the Committed Capacity equal to 0 kW until such time as the Facility can partially or fully operate at the Committed Capacity that existed prior to the Force Majeure. If the Committed Capacity is 0 kW, DEF shall have no obligation to make Capacity Payments hereunder.
- 18.7** If, at any time during the occurrence of an event of Force Majeure or during its cure, the Facility can partially or fully operate, then the RF/QF shall temporarily set the Committed Capacity at the maximum capability that the Facility can reasonably be expected to operate.
- 18.8** Upon the cessation of the event of Force Majeure or the conclusion of the cure for the event of Force Majeure, the Committed Capacity shall be restored to the Committed Capacity that existed immediately prior to the Force Majeure. Notwithstanding any other provisions of this Contract, upon such cessation or cure, DEF shall have right to require a Committed Capacity Test to demonstrate the Facility's compliance with the requirements of this Section 18.8. Any such Committed Capacity Test required by DEF shall be additional to any Committed Capacity Test under Section 7.4.
- 18.9** During the occurrence of an event of Force Majeure and a reduction in Committed Capacity under Section ~~18.4-5~~ all Monthly Capacity Payments shall reflect, pro rata, the reduction in Committed Capacity, and the Monthly Capacity Payments will continue to be calculated in accordance with the pay-for-performance provisions in Appendix A.

20.15 No Waiver

No waiver of any of the terms and conditions of this Contract shall be effective unless in writing and signed by the Party against whom such waiver is sought to be enforced. Any waiver of the terms hereof shall be effective only in the specific instance and for the specific purpose given. The failure of a Party to insist, in any instance, on the strict performance of any of the terms and conditions hereof shall not be construed as a waiver of such Party's right in the future to insist on such strict performance.

20.16 Set-Off

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

20.17 Change in Environmental Law or Other Regulatory Requirements

- (a) As used herein, "Change(s) in Environmental Law or Other Regulatory Requirements" means the enactment, adoption, promulgation, implementation, or issuance of, or a new or changed interpretation of, any statute, rule, regulation, permit, license, judgment, order or approval by a governmental entity that specifically addresses environmental or regulatory issues and that takes effect after the Effective Date.
- (b) The Parties acknowledge that Change(s) in Environmental Law or Other Regulatory Requirements could significantly affect the cost of the Avoided Unit ("Avoided Unit Cost Changes") and agree that, if any such change(s) should affect the cost of the Avoided Unit more than the Threshold defined in Section 20.17(c) below, the Party affected by such change(s) may avail itself of the remedy set forth in Section 20.17(d) below as its sole and exclusive remedy.
- (c) The Parties recognize and agree that certain Change(s) in Environmental Law or Other Regulatory Requirements may occur that do not rise to a level that the Parties desire to impact this ~~Agreement~~Contract. Accordingly, the Parties agree that for the purposes of this ~~Agreement~~Contract, such change(s) will not be deemed to have occurred unless the change in Avoided Cost resulting from such change(s) exceed a mutually agreed upon amount. This mutually agreed upon amount is attached to this Contract in Appendix E.



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FIRST-SECOND REVISED SHEET NO. 9.441
CANCELS ORIGINAL FIRST REVISED SHEET NO.
9.441

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

RF/QF

~~FLORIDA POWER CORORPATION d/b/a~~
DUKE ENERGY FLORIDA, INC.

Signature

Signature

Print Name

Print Name

Title

Title

Date
Date

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

DUKE ENERGY FLORIDA, INC.

Signature

Print Name

Title

Date

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

TABLE 3
EXAMPLE MONTHLY CAPACITY PAYMENT IN \$/kW/MONTH
DEF'S June 1, 2021 Undesignated CC
Renewable or Qualifying Facility Standard Offer Contract Avoided Capacity Payments
(\$/kW/MONTH)

Contract Year	<u>Option A</u>	<u>Option B</u>	<u>Option C</u>	<u>Option D</u>
	Normal Capacity Payment Starting on the Avoided Unit In-Service Date	Early Capacity Payment Starting on the Exemplary Capacity Payment Date	Levelized Capacity Payment Starting on the Avoided Unit In-Service Date	Early Levelized Capacity Payment Starting on the Exemplary Capacity Payment Date
2014		4.24		4.97
2015		4.35		4.97
2016		4.455.46		4.986.34
2017		4.575.60		4.996.35
2018		4.685.74		4.996.36
2019		4.805.88		5.006.37
2020		4.926.03		5.016.38
2021	9.909.97	5.046.18	10.8811.06	5.026.39
2022	10.1410.21	5.176.34	10.8911.08	5.036.40
2023	10.4010.47	5.306.49	10.9411.09	5.036.41
2024	10.6610.73	5.436.66	10.9311.11	5.046.42
2025	10.9211.00	5.566.82	10.9511.13	5.056.43
2026	11.2011.27	5.706.99	10.9611.15	5.066.44
2027	11.4811.56	5.857.17	10.9811.16	5.076.46
2028	11.7611.85	5.997.35	11.0011.18	5.086.47
2029	12.0612.14	6.147.53	11.0211.20	5.096.48
2030	12.3612.45	6.297.72	11.0411.22	5.106.49
2031	12.76	7.91	11.24	6.50

- The Capacity Payment schedules contained in this Contract assume a term of ten years from the Avoided Unit In-Service Date. In the event the RF/QF requests a term greater than ten years but less than the Avoided Unit Life then DEF shall prepare a schedule of Capacity Payments for the requested term. Such Capacity Payment rates shall be calculated utilizing the value-of-deferral methodology described in FPSC Rule 25-17.0832(6).

For any period during which energy is delivered by the RF/QF to DEF, the Firm Energy Rate in cents per kilowatt hour (¢/kWh) shall be the following on an hour-by-hour basis: the lesser of (a) the As-Available Energy Rate and (b) the Avoided Unit Energy Cost. The Avoided Unit Energy Cost, in cents per kilowatt - hour (¢/kWh) shall be defined as the product of (a) the Avoided Unit Fuel Cost and (b) the Avoided Unit Heat Rate; plus (c) the Avoided Unit Variable O&M.

For the purposes of this agreement, the Avoided Unit Fuel Cost shall be determined from gas price published in Platts Inside FERC, Gas Market Report, first of the month posting for Florida Gas Transmission ("FGT") Zone 3, plus other charges, surcharges and percentages that are in effect from time to time.

The Parties may mutually agree to fix a minority portion of the base energy payments associated with the Avoided Unit and amortize that fixed portion, on a present value basis, over the term of the Contract. Such fixed energy payments may, at the option of the RF/QF, start as early as the Avoided Unit In-Service Date. For purposes of this paragraph, "base energy payments associated with the Avoided Unit" means the energy costs of the Avoided Unit to the extent that the Avoided Unit would have been operated. If this option is mutually agreed upon, it will be attached to this Contract in Appendix E.

ESTIMATED AS-AVAILABLE ENERGY COST

For informational purposes only, the estimated incremental avoided energy costs for the next four semi-annual periods are as follows. The following estimates include variable operation and maintenance expenses.

<u>Applicable Period</u>	<u>Average ¢/KWH</u>
April 1, 2013-2014 - September 30, 2013 <u>2014</u>	3.84.0
October 1, 2013-2014 – March 31, 2014 <u>2015</u>	3.54.0
April 1, 2014 <u>2015</u> – September 30, 2014 <u>2015</u>	4.24.1
October 1, 2014-2015 – March 31, 2015 <u>2016</u>	3.94.1

ESTIMATED UNIT FUEL COST

The estimated unit fuel costs listed below are associated with the Avoided Unit and are based on current estimates of the price of natural gas.

\$/MMBTU

<u>2014201</u>	<u>2015201</u>	<u>2016201</u>	<u>2017201</u>	<u>2018201</u>	<u>2019202</u>	<u>2020202</u>	<u>2021202</u>	<u>2022202</u>
<u>5</u>	<u>6</u>	<u>7</u>	<u>8</u>	<u>9</u>	<u>0</u>	<u>1</u>	<u>2</u>	<u>3</u>
4.334.44	4.604.56	5.035.25	5.355.75	5.686.03	6.036.62	6.386.93	6.747.16	7.127.39

DELIVERY VOLTAGE ADJUSTMENT

DEF's average system line losses are analyzed annually for the prior calendar year, and delivery efficiencies are developed for the transmission, distribution primary, and distribution secondary voltage levels. This analysis is provided in the DEF's semi-annual fuel cost recovery filing with the FPSC in Exhibit Schedule E1. An adjustment factor, calculated as the reciprocal of the appropriate delivery efficiency factor, is applicable to the above determined energy costs if the RF/QF is within DEF's service territory to reflect the delivery voltage level at which RF/QF energy is received by the DEF.

The current delivery voltage adjustment factors are:

<u>Delivery Voltage</u>	<u>Adjustment Factor</u>
Transmission Voltage Delivery	1.01561.0149
Primary Voltage Delivery	1.02561.0249
Secondary Voltage Delivery	1.05981.0639

PERFORMANCE CRITERIA

Payments for firm Capacity are conditioned on the RF/QF's ability to maintain the following performance criteria:

A. Capacity Delivery Date

The Capacity Delivery Date shall be no later than the Required Capacity Delivery Avoided Unit In-Service Date.

B. Availability and Capacity Factor



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CANCELS ~~SIXTH-SEVENTH~~ REVISED SHEET NO. 9.458

The Facility's availability and capacity factor are used in the determination of firm Capacity Payments through a performance based calculation as detailed in Appendix A to the Contract.

SCHEDULE 2
TO RATE SCHEDULE COG-2CAPACITY OPTION PARAMETERS

**FIXED VALUE OF DEFERRAL PAYMENTS -
 NORMAL CAPACITY OPTION PARAMETERS**

Where, for one year deferral:

		<u>Value</u>
VAC_m	= DEF's value of avoided capacity and O&M, in dollars per kilowatt per month, during month m;	9.90 <u>9.97</u>
K	= present value of carrying charges for one dollar of investment over L years with carrying charges computed using average annual rate base and assumed to be paid at the middle of each year and present valued to the middle of the first year;	1.357 <u>1.367</u>
I_n	= total direct and indirect cost, in mid-year dollars per kilowatt including AFUDC but excluding CWIP, of the Avoided Unit with an in-service date of year n;	1613.11
O_n	= total fixed operation and maintenance expense, for the year n, in mid-year dollars per kilowatt per year, of the Avoided Unit;	7.85
i_p	= annual escalation rate associated with the plant cost of the Avoided Unit;	2.50%
i_o	= annual escalation rate associated with the operation and maintenance expense of the Avoided Unit;	2.50%
r	= annual discount rate, defined as DEF's incremental after-tax cost of capital;	6.46%
L	= expected life of the Avoided Unit;	35
n	= year for which the Avoided Unit is deferred starting with the Avoided Unit In-Service Date and ending with the Termination Date.	2021

**FIXED VALUE OF DEFERRAL PAYMENTS -
 EARLY CAPACITY OPTION PARAMETERS**

A_m	=	monthly avoided capital cost component of Capacity Payments to be made to the RF/QF starting as early as seven <u>five</u> years prior to the Avoided Unit In-Service Date, in dollars per kilowatt per month;	3.96 <u>5.10</u>
i_p	=	annual escalation rate associated with the plant cost of the Avoided Unit;	2.50%
n	=	year for which early Capacity Payments to a RF/QF are to begin;	2014 <u>2016</u>
F	=	the cumulative present value of the avoided capital cost component of Capacity Payments which would have been made had Capacity Payments commenced with the anticipated in-service date of the Avoided Unit and continued for a period of 10 years;	569.86 <u>660.53</u>
r	=	annual discount rate, defined as DEF's incremental after-tax cost of capital;	6.46%
t	=	the Term, in years, of the Contract for the purchase of firm capacity commencing prior to the in-service date of the Avoided Unit;	17 <u>16</u>
G	=	the cumulative present value of the avoided fixed operation and maintenance expense component of Capacity Payments which would have been made had Capacity Payments commenced with the anticipated in-service date of the Avoided Unit and continued until the Termination Date.	40.33 <u>46.41</u>

EXHIBIT C

**ECONOMIC / FINANCIAL ASSUMPTIONS
and K FACTOR**

**Duke Energy Florida
Renewable Standard Offer Contract
Economic Assumptions**

CAPITALIZATION RATIOS

Debt	50.0%
Preferred	0.0%
Equity	50.0%

DISCOUNT RATE

6.46%

RATE OF RETURN

Debt	3.75%
Preferred	0.00%
Equity	10.50%

BOOK DEPRECIATION LIFE

35 Years

INCOME TAX RATE

Effective	35.26%
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TAX DEPRECIATION LIFE

20 Years

OTHER TAXES AND INS.

0.96%

**Duke Energy Florida
Renewable Standard Offer Contract
Unit Information**

PLANT TYPE: Combined Cycle Facility

NET CAPACITY: 793 MW

BOOK LIFE: 35 Years

INTALLED COST (IN-SERVICE YEAR 2019)

TOTAL INSTALLED COST (\$/KW)	1613.11
DIRECT CONSTRUCTION COST (\$/KW) (2014)	1281.90
AFUDC AMOUNT (\$/KW)	146.84
ESCALATION	184.37
FIXED O & M (\$/KW-YR) (2014)	6.60
VARIABLE O & M (\$/KWH) (2014)	5.45
K FACTOR	1.367