

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: DeSoto County Generating)
Company's Objections to Florida)
Power & Light Company's 2015 Request) DOCKET NO. 15_____ -EI
for Proposals for Generating Capacity)
in 2019) FILED: MARCH 26, 2015
_____)

**DESOTO COUNTY GENERATING COMPANY, LLC'S OBJECTIONS TO FLORIDA
POWER & LIGHT COMPANY'S 2015 REQUEST FOR PROPOSALS**

DeSoto County Generating Company, LLC ("DeSoto" or "DeSoto Generating Company"), pursuant to Chapters 120 and 366, Florida Statutes,¹ and Rule 25-22.082, Florida Administrative Code ("F.A.C."), hereby respectfully submits its objections (hereinafter the "Objections") to "Florida Power & Light Company's 2015 Request for Proposals To Meet Generation Capacity Needs Beginning in 2019" ("FPL's RFP" or simply the "RFP") which was issued on March 16, 2015.

In summary, DeSoto is a customer of Florida Power & Light Company ("FPL"), the owner and operator of the DeSoto Generating Facility, a natural gas fired electrical power plant located in Arcadia, Florida ("DeSoto Facility" or "Facility"), and a potential participant in FPL's RFP process. As a potential participant in FPL's RFP process, DeSoto's substantial interests are directly affected by the terms and conditions of FPL's RFP; DeSoto believes that several of the RFP terms and conditions are unfair, unduly discriminatory, unreasonable, and contrary to the public interest and the best interests of FPL's retail electric

¹ All references herein to the Florida Statutes are to the 2014 edition thereof.

customers. Moreover, as a customer of FPL, DeSoto's substantial interests in having FPL make the best, most cost-effective decision regarding additional generation resources to be added to FPL's system to meet its alleged 2019 need for capacity will also be affected by the RFP, as well as by the anticipated subsequent need determination proceedings. In short, DeSoto believes that several terms and conditions that FPL has attempted to impose on potential participants are unfair, unduly discriminatory, unreasonable, and contrary to the public interest, specifically because those terms and conditions are unduly discriminatory and restrictive of the power supply options that FPL will consider in its RFP process.

In further support of its Objections, DeSoto County Generating Company states as follows.

PROCEDURAL BACKGROUND

1. The name, address, and telephone number of the Petitioner are as follows:

DeSoto County Generating Company, LLC
3800 North Roan Street
Arcadia, Florida 34266
Telephone (212) 547-3456

2. All pleadings, orders and correspondence should be directed to Petitioner's representatives as follows:

Robert Scheffel Wright
John T. LaVia, III
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with a courtesy copy to:

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East Brunswick, New Jersey 08816
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3. The agency affected by this pleading is:

Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

4. Matters relating to FPL's RFP and DeSoto's Objections to the RFP are governed by Commission Rule 25-22.082, F.A.C., Selection of Generating Capacity, commonly referred to as the "Bid Rule," and specifically Rule 25-22.082(12), F.A.C., which provides as follows:

(12) A potential participant may file with the Commission objections to the RFP limited to specific allegations of violations of this rule within 10 days of the issuance of the RFP. The public utility may file a written response within 5 days. Within 30 days from the date of the objection, the Commission panel assigned shall determine whether the objection as stated would demonstrate that a rule violation has occurred, based on the written submission and oral argument by the objector and the public utility, without discovery or an evidentiary hearing. The RFP process will not be abated pending the resolution of such objections.

FPL's RFP was issued on March 16, 2015. Therefore, with respect to Rule 25-22.082(12), F.A.C., DeSoto's Objections are timely filed.

FACTUAL BACKGROUND

5. DeSoto County Generating Company, LLC is a Delaware limited liability company authorized to do business in the State

of Florida and duly registered with the Florida Department of State, Division of Corporations, as a foreign limited liability company. DeSoto is an affiliate of LS Power Development, LLC ("LS Power"), an independent power company with offices in four states that develops, owns, operates, and invests in power generation and transmission infrastructure throughout the United States. LS Power has developed, constructed, managed, or acquired more than 31,000 megawatts ("MW") of competitive power generation and 470 miles of electric transmission lines.

6. The DeSoto Facility is a 310 MW (summer net) simple-cycle combustion turbine plant capable of operating on both natural gas and No. 2 fuel oil. The Facility is located in Arcadia, Florida and is interconnected to FPL's transmission system and to the Florida Gas Transmission Company ("FGT") natural gas pipeline. The Facility consists of two GE 7241FA combustion turbine ("CT") units with a combined summer net generating capacity of 310 MW when firing natural gas. The Facility achieved commercial operation in June 2002 and has operated reliably since that time, supplying wholesale power to a number of Florida utilities.

7. DeSoto has sold both capacity and energy from the Facility to FPL, and to other Florida utilities, over the past 10 years, and the Commission has approved FPL's recovery of payments to DeSoto on the basis that those payments were reasonable and prudent. However, FPL has not seen fit to utilize the Facility over the past few years. Due to the lack of commercial interest,

the Facility has not operated and is currently in "inactive reserve" status with the Florida Reliability Coordinating Council.

8. DeSoto has been a retail customer of FPL since 2002, receiving service under FPL's General Service Demand (GSD-1) and Standby and Supplemental Service-1 Time-of-Use (SST-1) rate schedules.

9. DeSoto learned of FPL's RFP on March 3, 2015, from an advertisement in MW Daily, a power industry trade publication. The ad indicated that the RFP was to be issued on March 16, with a pre-issuance call to be held on March 9. LS Power representatives participated in that call, and despite the short time - until Friday March 13 - afforded to comment on the RFP, LS Power submitted written comments regarding the RFP. (A copy of LS Power's comments is attached as Exhibit A.) FPL apparently did not respond to any of LS Power's concerns, and several of those concerns are among the Objections raised here.

STATEMENT OF AFFECTED INTERESTS

10. The purposes of the Bid Rule are "to provide the Commission information to evaluate a public utility's decision regarding the addition of generating capacity" and to require the use of RFP processes "to ensure that a public utility's selection of a proposed generation addition is the most cost-effective alternative available" to meet the needs of the utility and its customers. These purposes are obviously consistent with, and in furtherance of, the Commission's overriding statutory mandate to

regulate public utilities in the public interest, Section 366.01, Florida Statutes, and its somewhat more specific statutory "jurisdiction over the planning, development, and maintenance of a coordinated electric power grid throughout Florida to assure an adequate and reliable source of energy for operational and emergency purposes in Florida and the avoidance of further uneconomic duplication of generation, transmission, and distribution facilities." Fla. Stat. § 366.04(5).

11. DeSoto is a potential participant in FPL's RFP process. Specifically, DeSoto would like to offer to sell capacity and energy from the DeSoto Facility to FPL to meet part of its generating capacity needs over the relevant planning horizon. Such sale could potentially come in the form of a sale of the DeSoto Facility itself or pursuant to a power purchase agreement ("PPA"), as it has done in the past. In the context of applicable Florida law governing standing in administrative proceedings, DeSoto's substantial interests are of sufficient immediacy to entitle it to initiate this proceeding and are the type of interests that the proceeding is designed to protect. Generally, to participate as a party in any proceeding, a party must demonstrate that its substantial interests will be affected by the proceeding. Specifically, the party must demonstrate that it will suffer a sufficiently immediate injury in fact that is of the type the proceeding is designed to protect. Ameristeel Corp. v. Clark, 691 So. 2d 473 (Fla. 1997); Agrico Chemical Co. v. Department of Environmental Regulation, 406 So. 2d 478 (Fla. 2d

DCA 1981), rev. denied, 415 So. 2d 1359 (Fla. 1982). Here, the outcome of this proceeding will immediately impact and determine DeSoto's substantial interests in ensuring that its proposals receive fair consideration by FPL in the RFP process. Accordingly, DeSoto's interests and the potential adverse effect on its interests are specifically the type of injury against which this proceeding is designed to protect, namely, to ensure that FPL's RFP processes are fair, reasonable, not unduly discriminatory, consistent with the basic purposes of the Bid Rule, in the public interest, and in the best interests of FPL's customers. Moreover, as a potential participant in FPL's RFP process, DeSoto is specifically authorized by Rule 25-22.082(12), F.A.C., to file these Objections. Accordingly, DeSoto has standing to lodge these Objections to FPL's RFP pursuant to Rule 25-22.082(12), F.A.C.

DeSOTO's OBJECTIONS TO FPL's 2015 REQUEST FOR PROPOSALS

12. These Objections are submitted pursuant to the applicable provisions of the Bid Rule, as follows. Rule 25-22.082(12), F.A.C., provides as follows:

(12) A potential participant may file with the Commission objections to the RFP limited to specific allegations of violations of this rule within 10 days of the issuance of the RFP. The public utility may file a written response within 5 days. Within 30 days from the date of the objection, the Commission panel assigned shall determine whether the objection as stated would demonstrate that a rule violation has occurred, based on the written submission and oral argument by the objector and the public utility, without discovery or an evidentiary hearing. The RFP process will not be abated pending the resolution of such objections.

Rule 25-22.082(5), F.A.C., provides as follows:

(5) No term of the RFP shall be unfair, unduly discriminatory, onerous, or commercially infeasible. Each public utility's RFP shall include, at a minimum:

(a) A detailed technical description of the public utility's next planned generating unit or units on which the RFP is based, as well as the financial assumptions and parameters associated with it, including, at a minimum, the following information:

1. A description of the public utility's next planned generating unit(s) and its proposed location(s);

2. The MW size;

3. The estimated in-service date;

4. The primary and secondary fuel type;

5. An estimate of the total direct cost;

6. An estimate of the annual revenue requirements;

7. An estimate of the annual economic value of deferring construction;

8. An estimate of the fixed and variable operation and maintenance expense;

9. An estimate of the fuel cost;

10. An estimate of the planned and forced outage rates, heat rate, minimum load and ramp rates, and other technical details;

11. A description and estimate of the costs required for associated facilities such as gas laterals and transmission interconnection;

12. A discussion of the actions necessary to comply with environmental requirements; and

13. A summary of all major assumptions used in developing the above estimates;

(b) A copy of the public utility's most recent Ten-Year Site Plan;

(c) A schedule of critical dates for solicitation, evaluation, screening of proposals, selection of finalists, and subsequent contract negotiations;

(d) A description of the price and non-price attributes to be addressed by each alternative generating proposal including, but not limited to:

1. Technical and financial viability;

2. Dispatchability;

3. Deliverability (interconnection and transmission);

4. Fuel supply;

5. Water supply;

6. Environmental compliance;

7. Performance criteria;

8. Pricing structure; and

(e) A detailed description of the criteria and the methodology, including any weighting and ranking

factors, to be used to evaluate alternative generating proposals on the basis of price and non-price attributes.

(f) Any application fees that will be required of a participant. Any such fees or deposits shall be cost-based;

(g) Best available information regarding system-specific conditions which may include, but not be limited to, preferred locations proximate to load centers, transmission constraints, the need for voltage support in particular areas, and/or the public utility's need or desire for greater diversity of fuel sources.

Finally, Rule 25-22.082(10), F.A.C., provides as follows:

(10) The public utility shall allow participants to formulate creative responses to the RFP, such as responses which employ innovative or inventive technologies or processes. The public utility shall evaluate all proposals.

13. DeSoto objects to FPL's RFP for the following reasons:

- a. FPL's requirement prohibiting consideration of proposals that offer to sell an existing generating unit to FPL is unfair, unreasonable, anti-competitive, and contrary to the public interest.
- b. As discussed below, FPL apparently refuses to consider, in this RFP process, proposals from generating facilities that would offer to supply combustion turbine ("CT") technology to displace other pre-2019 CT capacity in FPL's current generation expansion plan, upon which its asserted need for the Okeechobee Clean Energy Center is based, as part of a potentially more cost-effective generation expansion plan for FPL and its customers. FPL's refusal to consider such options is unreasonable, anti-competitive, and contrary to the public interest.
- c. FPL's proposed Performance Security of \$200,000 per megawatt (\$200 per kilowatt) of capacity is unfair, onerous, unnecessary, and inconsistent with other well-known completion/performance security requirements in Florida PPAs, including FPL's own Standard Offer Contract.
- d. The "Financial Viability Requirements for Proposers" are unfair and unreasonable, particularly as they are applied rigidly to the owners and operators of existing generating facilities with proven commercial performance in the Florida bulk power market.

- e. The condition that FPL purports to impose, on proposers of PPAs that would be performed from existing generating facilities with proven performance in the Florida bulk power market, that they use only Original Equipment Manufacturer ("OEM") parts in their generating facilities and equipment, is unfair, onerous, unduly discriminatory, unnecessary, and contrary to the public interest.

These Objections are discussed in more detail below.

14. Prohibition of Proposals to Sell to FPL Existing Generating Facilities or New, Turnkey Power Plants. DeSoto objects to FPL's exclusion of proposals offering the sale of an existing generating unit or a new turnkey generating unit from consideration in the RFP process. This RFP constraint (RFP at 15) is unfair and violates Rule 25-22.082(5), F.A.C., because it is facially anti-competitive, as well as facially contrary to the public interest, because it limits the universe or population of generation supply alternatives that FPL will even consider as being potentially cost-effective alternatives for its customers. It is also unduly discriminatory because it plainly forecloses an entire class of potential suppliers - those who would offer to sell FPL a power plant - from consideration in the RFP process. This provision also violates the rule because it is unfair not only to potential RFP participants who might wish to sell their facilities to FPL but also to FPL's customers because it limits the options that FPL will even **consider**. It is inconsistent with the fundamental purposes of the Bid Rule and with Rule 25-22.082(10), F.A.C., because it forecloses consideration of potential alternatives; on its face, shutting out potential supply options deprives the Commission of potential information regarding the options available to the public utility, FPL in

this instance. And finally, it is contrary to the public interest for the same reasons: it limits competition and restricts the population from which FPL will even **consider** choosing a cost-effective power supply option. The sound basis for DeSoto's Objection is proven by the recent experience of Duke Energy Florida, which, having gone through an RFP process for certain power supply needs, eventually determined that the purchase of an existing facility, Calpine's Osprey Energy Facility in Auburndale, Florida, represents the most cost-effective alternative available to Duke and its customers. In Re: Petition for Determination that the Osprey Plant Acquisition is the Most Cost Effective Generation Alternative to Meet the Remaining Need Prior to 2018 for Duke Energy Florida, Inc., PSC Docket No. 150043-EI, Duke Energy Florida's Petition, PSC Document No. 00658-15, filed January 30, 2015.

15. Refusal to Consider Other Cost-Effective Additions to FPL's Generation Expansion Plan. According to its RFP, Appendix E at pages E-4 and E-5, FPL indicates that it intends to retire certain gas turbine units at its Lauderdale, Port Everglades, and Ft. Myers plant sites and to replace that capacity with new CTs at its Lauderdale and Ft. Myers sites. The DeSoto Facility is located electrically in the same transmission area as the Ft. Myers units, and DeSoto believes that it would be more cost-effective for FPL to purchase the DeSoto Facility instead of adding some (possibly all) of the proposed CTs at the Ft. Myers site. Clearly, FPL's overall generation expansion plan over the

relevant planning horizon, which is probably from now through 2049 (30 years after the proposed in-service date of the Okeechobee Clean Energy Center), is at issue in this RFP process and in any subsequent need determination proceeding,¹ yet in a conference call with bidders on March 24, FPL's representative stated that no proposals in the instant RFP process would be considered as potential cost-effective alternatives to FPL's proposed CTs. This is another example of an FPL-imposed restriction on participation in its RFP process that is unfair and violates Rule 25-22.082(10), F.A.C., because it limits creative, and potentially cost-effective, responses to the RFP from potential participants. Moreover, this restriction can only redound to the detriment of customers by foreclosing fair, transparent consideration of potentially cost-effective alternatives. The Commission should direct FPL to consider alternatives that will potentially improve the overall cost-effectiveness of FPL's long-term generation expansion plan.

16. Completion and Performance Security Requirements. FPL's RFP would require all proposers to post a "Performance Security" of \$200,000 per MW, or \$200 per kW, of capacity. These proposed Completion and Performance Security requirements violate Rule 25-22.082(5), F.A.C., because they are unfair, unnecessary, and contrary to the public interest, particularly as applied to

¹Nothing in these objections is intended to limit DeSoto's right to raise any and all relevant issues in a subsequent need determination proceeding.

existing generating facilities with proven reliable performance records in the Florida bulk power market. FPL's own Standard Offer Contract (see FPL Tariff Sheet No. 10.406, attached as Exhibit B) requires a Performance Security of only \$30,000 per MW or \$30 per kW. The Commission should direct FPL to reduce the required Performance Security, at least for existing facilities where the owner/operator can demonstrate a proven record of satisfactory performance, whether from an existing facility in Florida, such as the DeSoto Facility, or from other facilities in Florida or in other power markets.

17. Financial Viability Requirements. FPL's RFP would require each Proposer, or a Guarantor, to have a senior unsecured debt rating of no less than BBB- from Standard & Poor's or Baa3 from Moody's Investors Service with a "stable" outlook, and also to satisfy the Completion and Performance Security requirements discussed above. This requirement could have the effect of foreclosing completely viable proposals from even being considered. Accordingly, it is anti-competitive and thus unfair, and accordingly, it violates Rule 25-22.082(5), F.A.C. Applying such a requirement **in addition to** any Performance Security requirement (even such a security requirement at a more reasonable level than FPL's proposed \$200,000 per MW) is unnecessary and can only operate to restrict competitive proposals. Applying it to an entity such as DeSoto, which has operated the DeSoto Facility successfully, responsibly, and reliably in Florida for more than a decade, and which has

previously sold capacity and energy to FPL under contracts for which the Commission approved cost recovery, is facially unreasonable and contrary to the best interests of FPL's customers.

18. OEM Equipment Requirement on PPA Proposers. FPL's RFP (RFP at 18, Appendix B at B-5) would require that proposers of PPAs could only use "Original Equipment Manufacturer" parts for certain gas turbine components. This requirement may well have an appropriate place as applied to a generating unit that FPL would purchase, e.g., because FPL may have a master maintenance contract with a manufacturer such as GE or Siemens that covers all of the manufacturer's units in FPL's owned fleet. However, this requirement is unfair, and thus violates Rule 25-22.082(5), F.A.C., because it would impose unnecessary costs on potential participants. It is also inconsistent with the fundamental purposes of the Bid Rule itself because it is at least potentially counter-productive, when applied to PPA proposals from existing generating facilities, because the PPA itself would contain defined criteria for the actual **performance** of the unit or units from which the PPA was being performed, and the contractual requirements in the PPA applicable to performance are entirely adequate to protect FPL and its customers, without the artificial and unnecessary - and unnecessarily expensive - requirement that all PPA suppliers must use OEM equipment. Additionally, in some instances known to DeSoto and LS Power, other parts suppliers' products have proven better than OEM

equipment. The Commission should direct FPL to eliminate this requirement.

**STATUTES AND RULES THAT ENTITLE DeSOTO COUNTY
GENERATING COMPANY TO RELIEF**

19. The applicable statutes and rules that entitle DeSoto to relief include, but are not limited to, Section 366.04(5), Florida Statutes, Section 403.519, Florida Statutes, and Rule 25-22.082, F.A.C. Section 366.04(5), Florida Statutes, charges the Commission to avoid the uneconomic duplication of generating facilities in Florida. Section 403.519, Florida Statutes, charges the Commission to determine whether a utility's proposed generating resource or resources represent the most cost-effective alternative(s) available to meet the needs of the utility and its customers. Rule 25-22.082(12), F.A.C., provides that a potential participant in a utility's RFP process may seek the Commission's determination regarding the propriety of terms and conditions that a utility purports to impose in an RFP process. Rule 25-22.082(5), F.A.C., requires that all terms and conditions of a utility's RFP must be fair, and Rule 25-22.082(10), F.A.C., requires that an RFP must allow for creative proposals. The entire Bid Rule itself is intended to provide the Commission information to evaluate a public utility's decision regarding the addition of generating capacity and to ensure that utility RFP processes result in the selection of the most cost-effective power supply alternative available to meet the needs of the utility and its customers. Section 366.04(5), Florida

Statutes, requires the Commission to exercise its jurisdiction to avoid the uneconomic duplication of generation facilities. Together, these statutes and rules entitle DeSoto to the relief requested.

CONCLUSION AND RELIEF REQUESTED

WHEREFORE, DeSoto respectfully requests the Commission to take jurisdiction over these Objections and to conduct the oral argument contemplated by Rule 25-22.082(12), F.A.C., and thereafter to direct FPL to modify its RFP processes to fairly address DeSoto's Objections, and to grant such other and further relief as the Commission deems appropriate to protect the interests of DeSoto and all potential participants in FPL's RFP, and to protect the public interest.

Respectfully submitted this 26th day of March 2015.



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished to the following by electronic mail on this 26th day of March 2014.

Charles Beck
Mary Anne Helton
Adam Teitzman
Florida Public Service Commission
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Attorney

As requested during the March 9 RFP Pre-Issuance Discussion Meeting, LS Power provides the following comments:

Process Timeframe. LS Power first became aware of FPL's potential RFP in a MW Daily ad on March 3, 2015. According to the ad, the RFP was to be released on March 16 with a pre-issuance call slated for March 9. As requested, we registered with FPL and attended the March 9 meeting via phone conference call. That call confirmed that the full RFP would be released on March 16, only a week after the call. Despite Dr. Sim's presentation that stated part of the purpose of the pre-call was to solicit feedback and comments on the RFP, we are concerned that the short time frame between the pre-release meeting and issuance of the RFP releasing initial, limited details about the RFP does not allow a reasonable or sufficient amount of time for serious, thoughtful consideration and inclusion of comments from Bidders. LS Power affiliates currently own and operate over 10,000 MW of power plants in numerous markets across the United States and routinely participate in RFPs. In our experience, utilities looking for robust participation in their solicitations provide for significantly more time for consideration and inclusion of comments from potential bidders than 1 week; in fact, we often see 30-60 days of comment period to full draft RFP documents, not just limited RFP details such as those released on March 9. The timeframe of only 1 week between release of limited details and issuance of the RFP is simply insufficient for potential Bidders to provide meaningful comments and for FPL to give such comments adequate consideration. Based on our initial review of the pre-issuance presentation, we have not had a sufficient opportunity to provide an exhaustive list of comments. However, we are providing the following preliminary comments in order to comply with FPL's stated timeframe.

Eligible Types of Proposals. LS Power takes exception with the exclusion of proposals for the sale of an existing generator or a turnkey project. During the March 9 call, Dr. Sim stated that FPL will consider combinations of proposals that will be best overall for FPL ratepayers. However, ruling out the purchase of existing generating units and turnkey projects only limits the population or universe of potential proposals, and such limitations cannot help customers. In this context, it is worth noting that, as an outgrowth of its recent RFP process, Duke Energy Florida determined that the purchase of an existing generating unit, the Osprey Energy Center, is in fact the most cost-effective alternative available to meet Duke's needs. In short, limiting participation in the RFP process only limits FPL's opportunity to select the most cost-effective alternative or combination of alternatives from the universe of available options. This cannot be in the best interests of FPL's customers, and is unduly discriminatory.

Proposal Evaluation Fee. The \$25,000, proposal evaluation fee, along with the \$5,000 variation fee, is one of the highest, if not the single highest, proposal evaluation fees we have ever experienced. As noted above, LS Power and its affiliates routinely participate in multiple RFPs in various jurisdictions and we see such fees typically in the \$5,000 to \$10,000 range. Such a high fee will only discourage participation in FPL's RFP process, which will in turn limit the options available to meet the needs of FPL and its customers. The proposal evaluation fees should be reduced to a more reasonable amount.

We submit these comments in the hope of providing constructive input to the RFP and ensuring a robust process for evaluating a robust universe of supply-side alternatives to FPL's Next Planned Generating Unit.

(Continued from Sheet No. 10.405)

8.4.6 After providing notice to the QS, FPL shall not be required to purchase or receive energy from the QS during any period in which, due to operational circumstances, the purchase or receipt of such energy would result in FPL's incurring costs greater than those which it would incur if it did not make such purchases. An example of such an occurrence would be a period during which the load being served is such that the generating units on line are base load units operating at their minimum continuous ratings and the purchase of additional energy would require taking a base load unit off the line and replacing the remaining load served by that unit with peaking-type generation. FPL shall give the QS as much prior notice as practicable of its intent not to purchase or receive energy pursuant to this Section.

8.4.7 If the Facility has a Committed Capacity less than 75 MW, control, scheduling and dispatch of capacity and energy shall be the responsibility of the QS. If the Facility has a Committed Capacity greater than or equal to 75 MW, control, scheduling and dispatch of capacity and energy shall be the responsibility of the QS, except during a "Dispatch Hour", i.e., any clock hour for which FPL requests the delivery of such capacity and energy. During any Dispatch Hour: i) control of the Facility will either be by Seller's manual control under the direction of FPL (whether orally or in writing) or by Automatic Generation Control by FPL's system control center as determined by FPL, and ii) FPL may request that the real power output be at any level up to the Committed Capacity of the Facility, provided, in no event shall FPL require the real power output of the Facility to be below the Facility's Minimum Load without decommitting the Facility. The Facility shall deliver the capacity and energy requested by FPL within _____ minutes, taking into account the operating limitations of the generating equipment as specified by the manufacturer, provided such time period specified herein is considered reasonable by industry standards for the technology and equipment being utilized and assuming the Facility is operating at or above its Minimum Load. Start-up time from Cold Shutdown and Facility Turnaround time from Hot to Hot will be taken into consideration provided such are reasonable and consistent with good industry practices for the technology and equipment being utilized. The Facility's Operating Characteristics have been provided by the QS and are set forth in Appendix D, Section IV of Rate Schedule QS-2.

8.4.8 If the Facility has a Committed Capacity of less than 75 MW, FPL may require during certain periods, by oral, written, or electronic notification that the QS cause the Facility to reduce output to a level below the Committed Capacity but not lower than the Facility's Minimum Load. FPL shall provide as much notice as practicable, normally such notice will be of at least four (4) hours. The frequency of such request shall not exceed eighteen (18) times per calendar year and the duration of each request shall not exceed four (4) hours.

8.4.9 FPL's exercise of its rights under this Section 8 shall not give rise to any liability on the part of FPL, including any claim for breach of contract or for breach of any covenant of good faith and fair dealing.

9. Completion/Performance Security

9.1 As security for the achievement of the Capacity Delivery Date and satisfactory performance of its obligations hereunder, the QS shall provide FPL either: (a) an unconditional, irrevocable, standby letter of credit(s) with an expiration date no earlier than the end of the first (1st) anniversary of the Capacity Delivery Date (or the next business day thereafter), issued by a U.S. commercial bank or the U.S. branch of a foreign bank having a Credit Rating of A- or higher by S&P or A3 or higher by Moody's (a "Qualified Issuer"), in form and substance acceptable to FPL (including provisions (i) permitting partial and full draws and (ii) permitting FPL to draw in full if such letter of credit is not renewed or replaced as required by the terms hereof at least thirty (30) business days prior to its expiration date) ("Letter of Credit"); (b) a bond, issued by a financially sound Company and in a form and substance acceptable to FPL, ("Bond"); or (c) a cash collateral deposited with FPL ("Cash Collateral") (any of (a), (b), or (c), the "Completion/Performance Security"). Such Letter of Credit, Bond or Cash Collateral shall be provided in the amount and by the date listed below:

\$30.00 per KW (for the number of KW of Committed Capacity set forth in Section 5.1) to be delivered to FPL within thirty (30) calendar days of the execution of this Contract by the Parties hereto.

"Credit Rating" means with respect to any entity, on any date of determination, the respective ratings then assigned to such entity's unsecured, senior long-term debt or deposit obligations (not supported by third party credit enhancement) by S&P, Moody's or other specified rating agency or agencies or if such entity does not have a rating for its unsecured, senior long-term debt or deposit obligations, then the rating assigned to such entity as its "corporate credit rating" by S&P.

"Moody's" means Moody's Investors Service, Inc. or its successor.

"S&P" means Standard & Poor's Ratings Group (a division of The McGraw-Hill Companies, Inc.) or its successor.

(Continued on Sheet No. 10.407)