PROGRESS ENERGY FLORIDA

DOCKET NO. 040001-EI

FUEL ADJUSTMENT PROCEEDINGS

DIRECT TESTIMONY OF

SAMUEL S. WATERS

Q. Please state your name, employer, and business address.

A. My name is Samuel S. Waters and I am employed by Progress Energy Carolinas (PEC). My business address is 410 S. Wilmington Street, Raleigh, North Carolina, 27601.

Q. Please tell us your position with PEC and describe your duties and responsibilities in that position.

A. I am Manager of Resource Planning for Progress Energy Florida (PEF or the Company) and Progress Energy Carolinas. I am responsible for directing the resource planning process for both companies. Our resource planning process is an integrated approach to finding the most cost-effective alternatives to meet each company's obligation to serve, in terms of long-term price and reliability. We examine both supply-side and demand-side resources available and potentially available to the Company over its planning horizon, relative to the Company's load forecasts. In my capacity as Manager of Resource Planning, I oversaw the completion of the Company's most recent TYSP document filed in April 2004.

Q. Please summarize your educational background and employment experience.

A. I graduated from Duke University with a Bachelor of Science degree in Engineering in 1974. From 1974 to 1985, I was employed by the Advanced Systems Technology Division of the Westinghouse Electric Corporation as a consultant in the areas of transmission planning and power system analysis. While employed by Westinghouse, I earned a Masters Degree in Electrical Engineering from Carnegie-Mellon University.

I joined the System Planning department of Florida Power & Light Company (FPL) in 1985, working in the generation planning area. I became Supervisor of Resource Planning in 1986, and subsequently Manager of Integrated Resource Planning in 1987, a position I held until 1993. In late, 1993, I assumed the position of Director, Market Planning, where I was responsible for oversight of the regulatory activities of FPL's Marketing Department, as well as tracking of marketing-related trends and developments.

In 1994, I became Director of Regulatory Affairs Coordination, where I was responsible for management of FPL's regulatory filings with the FPSC and the Federal Energy Regulatory Commission (FERC). In 2000, I returned to FPL's Resource Planning Department as Director.

I assumed my current position with Progress Energy in January of this year. I am a registered Professional Engineer in the states of Pennsylvania and Florida, and a Senior Member of the Institute of Electrical and Electronics Engineers, Inc. (IEEE).

Q. Have you previously testified before this Commission?

A. Yes. I have testified in several dockets related to resource planning and the need for power.

Q. What is the purpose of your testimony in this proceeding?

A. My purpose in this testimony is to support the Company's request for approval of two recent long term purchase agreements. While the agreements do not call for the delivery of energy and capacity until 2007 and 2010, the purchases are components of the resource plan to meet our obligation to provide adequate and reliable electric service to our customers. Specifically these long term agreements are needed to maintain the 20 percent reserve margin. There would be a significant lead time associated with pursuing other alternatives to these agreements. For this reason we request a finding by the Commission that the agreements are a reasonable and prudent means to meet our long term resource plan. In his testimony, Mr. Portuondo discusses the appropriate recovery mechanism for recovery of energy and capacity payments as power is delivered under the agreements.

Q. Are you sponsoring any exhibits to your testimony?

A. Yes. I am sponsoring the following exhibits to my testimony:

SSW-1 Tolling Agreement between Shady Hills Power Company, L.L.C. and Florida Progress Corporation, d/b/a Progress Energy Florida, Inc.

SSW-2 Letter of Intent to Purchase Capacity and Energy from Southern Companies

SSW-3 Summary of Costs and Benefits of the Shady Hills Tolling Agreement

SSW-4 Summary of Costs and Benefits of the Unit Power Sales Agreement with the Southern Companies

They should be marked as Ex.___(SSW 1 -4).

Q. Please describe the new agreements.

A. Progress Energy has entered into an agreement with Shady Hills Power Company, LLC, to purchase the output of a facility nominally rated at 517 MW, for the period April 1, 2007 through April 30, 2014. It is a tolling agreement meaning that Progress Energy will purchase the fuel supply for the Shady Hills facility and receive all of the output. This purchase is needed to maintain a 20% reserve margin for the PEF system during that timeframe. The contract provides savings compared to constructing the 2006 combustion turbine facilities presented in the PEF 2004 Ten Year Site Plan.

In addition, PEF has signed a Letter of Intent with the Southern Companies to extend the existing 1988 Unit Power Sales Agreement. The anticipated term of this extension is June 1, 2010 through May 31, 2015. The capacity purchased under this contract is needed to maintain the 20 percent reserve margin for the PEF system and provides important strategic benefits to customers as well. Copies of the Shady Hills Tolling Agreement and the Letter of Intent with the Southern Companies are provided in my Exhibits ___ (SSW-1) and ___ (SSW-2).

Q. Please describe the contract with Shady Hills Power Company, LLC in more detail.

A. As I mentioned above, the agreement with Shady Hills Power Company, LLC is a tolling agreement whereby PEF will provide fuel to the Shady Hills facility, located in Pasco County, Florida, and receive the power output of the facility. The facility consists of three combustion turbines with a guaranteed heat rate of 10,400 Btu/kWh. Capacity of the units is seasonally adjusted, based on a nominal rating of 517 MW, from 478 MW, summer, to 520 MW, winter. Capacity charges vary seasonally, averaging $4.50 per kW

per month. A variable O&M charge is applied, depending on the fuel used in the facility: $0.25/MWh when running on gas, $2.12/MWh when running on oil.

Q. Does this contract provide savings to PEF customers?

A. Yes. PEF had identified construction of three combustion turbines in its 2004 Ten Year Site Plan, to be placed in service in December, 2006. Purchase of capacity from the Shady Hills facility provides savings of $55.4 million, CPVRR, when compared to construction of these facilities, as shown in my Exhibit ___ (SSW-3). The purchase of this capacity from the Shady Hills facility will defer the need for the combustion turbines beyond the planning horizon shown in the 2004 Ten Year Site Plan.

Q. Please describe the proposed agreement with the Southern Companies in more detail.

A. The proposed purchase is envisioned to be an extension of a long-standing agreement with the Southern Companies which has provided substantial benefits to PEF customers. PEF is currently negotiating with the Southern Companies to purchase 425 MW of capacity for the period June 1, 2010 through May 31, 2015, to be provided from Georgia Power Company's Scherer 3 coal-fired unit (74 MW) and Franklin 1 combined cycle unit (351 MW), based on the current demonstrated capabilities of these units. The agreement specifies levelized capacity charges of $12.94 per kW per month for the Scherer capacity, and $6.18 per kW per month for the Franklin capacity. The capacity prices cover capital costs, costs of non-environmental capital additions, fixed O&M and allocated overhead expenses. PEF will also be charged the costs of fixed transportation required to deliver

gas to the Franklin facility, and the costs of electrical transmission to the Florida-Georgia interface. Energy charges for these facilities will be based on delivered fuel prices, times a guaranteed heat rate at the Franklin unit, and the actual heat rate used at the Scherer unit.

Q. Does this contract provide savings to PEF customers?

A. Yes. The contract is expected to save PEF customers approximately $2.4 million, CPVRR, over the term June 1, 2010 through May, 2015, as shown in my Exhibit ___ (SSW-4). Under alternative assumptions regarding the availability of economy energy from the Southern system, the agreement would be expected to lose approximately $2.4 million, CPVRR. While I conclude that it is reasonable to expect net savings from this contract it should be noted that the range of predicted benefits, depending on the assumptions made in calculating them is from moderately positive to negative to the same degree. However in my judgment this range of potential benefits is acceptable because of the strategic value of this contract. Purchase of this capacity is expected to defer the need for a May, 2010 combined cycle unit, as discussed in PEF's 2004 Ten Year Site Plan.

Q. Does this contract provide other benefits to PEF customers?

A. Yes. In addition to the economics of the purchase, the contract will provide the following benefits:

- Contributes to fuel diversity - A portion of the energy will come from coal-fired generating capacity, providing low-cost energy and serving to reduce the price volatility of PEF's fuel mix.
- Contributes to economy energy availability – Access to the transmission facilities provided by the agreement will give PEF access to lower cost energy that may be available within the Southern region, in those hours when the units specific to the purchase are not scheduled.
- Contributes to increased reliability - The agreement will maintain a transmission path to the Southern system, which provides access to a large resource pool and enhances system supply reliability.
- Contributes to cost certainty - The purchases come from existing generating facilities. Utilization of existing resources provides greater assurance of cost and performance than might be obtained from units that would need to be constructed.
- Contributes to increased access to coal resources - The agreement is expected to provide a right-of-first refusal to the output of additional coal capacity in the Southern system, should that capacity not be returned to retail rate base.

Q. When is the agreement with the Southern Companies anticipated to be completed?

A. Negotiations are underway, and it is expected that a final agreement will be in place by the end of October.

Q. What action should the Commission take at this time, regarding these two agreements?

A. The Commission should find that entering these two agreements at this time is a reasonable and prudent action by the Company to maintain a 20% reserve margin over the long term. Recovery of energy and capacity costs pursuant to the agreements would be permitted subject to a finding of reasonableness and prudence at the time the expenses are presented for cost recovery.

Q. Does this conclude your testimony?

A. Yes.

Exhibit ____ (SSW-1)

Tolling Agreement between Shady Hills Power Company, L.L.C. and Florida Progress Corporation, d/b/a Progress Energy Florida, Inc.

(Filed Separately)

Confidential (revised)

TOLLING AGREEMENT

between

SHADY HILLS POWER COMPANY, L.L.C.

and

FLORIDA POWER CORPORATION,
d/b/a PROGRESS ENERGY FLORIDA, INC.

August 6, 2004

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TOLLING AGREEMENT

THIS TOLLING AGREEMENT (the "Agreement") is entered into as of the 6th Day of August, 2004, (the "Agreement Date"), by and between Shady Hills Power Company, L.L.C. ("Seller"), a Delaware limited liability company, and Florida Power Corporation, d/b/a Progress Energy Florida, Inc. ("Buyer"). Seller and Buyer may be individually referred to herein as a "Party" and, collectively, as the "Parties."

RECITALS

(A) Seller owns the Shady Hills electric generating facility located in Pasco County, Florida;

(B) Seller and Buyer desire to enter into a tolling arrangement whereby Buyer will deliver Fuel to Seller's Shady Hills electric generating facility and Seller will convert such Fuel into Energy and/or Ancillary Services when scheduled by Buyer; and

(C) The Parties desire to enter into this Agreement to set forth their respective rights and obligations in connection with this tolling arrangement.

NOW, THEREFORE, in consideration of the mutual promises and agreements set forth herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

1. DEFINITIONS

1.1 Defined Terms.

The following terms shall have the meanings set forth below.

(1) "Abandon" or "Abandonment" means the voluntary relinquishment of all possession and control of the Facility or complete cessation of work at the Facility by Seller and Seller's contractors, but only if such relinquishment or cessation is (i) in violation of Prudent Utility Practice, and (ii) not caused by a Force Majeure Event or an Event of Default by Buyer. Seller's assignment or transfer of the Facility or all or the majority of the stock or other ownership interests of Seller shall not, in and of itself, constitute Abandonment.

(2) "Acceptable Credit Rating" means, with respect to any Person, a Credit Rating by S&P and Moody's of at least BBB- by S&P and Baa3 by Moody's.

(3) "Acceptable Guarantor" means a Person that has an Acceptable Credit Rating and that is acceptable, as determined in a commercially reasonable manner, to the Party who would be protected by the Guaranty for this Agreement.

(4) "Actual Equivalent Availability" means the percentage of time the Facility is available for service, up to the Monthly Demonstrated Capacity, whether dispatched by Buyer or not, each Peak Month or Non-Peak Month during the Delivery Term, calculated in accordance with the formula in Exhibit D. The maximum Actual Equivalent Availability of the Facility is one hundred percent (100%). Any Forced Derate or Forced Outage will reduce the Actual Equivalent Availability of the Facility below one hundred percent (100%).

(5) "Affiliate" means any Person that directly or indirectly controls, is controlled by or is under common control with the Person in question.

(6) "AGC" means automatic generation control, which is the capability to make automatic adjustments to generation output in response to system changes through the use of a digital computer. This control is based on such factors as load, frequency, cost, and tie line flows.

(7) "Ancillary Services" means the ancillary services that are, or may become, available from the Facility which shall be delivered by Seller to Buyer for Buyer's sale to third parties or for Buyer to keep for its own use. Ancillary Services include, as defined by a Transmission Provider's open access transmission tariff, Reactive Supply and Voltage Control from Generation Sources Service, Regulation and Frequency Response Service, Energy Imbalance Service, Operating Reserve – Spinning Reserve Service and Operating Reserve - Supplemental Reserve Service provided within the safe operating parameters of the existing equipment at the Facility and environmental permits related to such services.

(8) "Available Capacity" is the Monthly Demonstrated Capacity of the Facility during an hour reduced by the capacity not available that hour due to a Forced Derate or Forced Outage. The Available Capacity shall be zero (0) during any periods of Forced Outage or any Force Majeure Events claimed by Seller where the Facility is forced out of service as a result of such Force Majeure Event.

(9) "Availability Notice" has the meaning set forth in Section 7.3.

(10) "Availability Rebate" has the meaning set forth in Section 6.3, 9.2(3) and Exhibit E.

(11) "Bankruptcy" means with respect to a Person that such Person (i) ceases doing business as a going concern, files a voluntary petition in bankruptcy or is adjudicated bankrupt or insolvent, or files any petition or answer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future federal bankruptcy code or any other present or future applicable federal, state or other Governmental Rule, or seeks or consents to or acquiesces in the appointment of any trustee, receiver, custodian or liquidator of said Person or of all or any substantial part of its properties, or makes an assignment for the benefit of creditors; or

(ii) a proceeding is initiated against the Person seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future federal bankruptcy code or any other Governmental Rule and, such proceeding, as described in this Section 1.1(11)(ii), is not dismissed within ninety (90) Days after the commencement, or any trustee, receiver, custodian or liquidator of said Person or of all or any substantial part of its properties is appointed without the consent or acquiescence of said Person, and such appointment is not vacated or stayed on appeal or otherwise within ninety (90) Days after the appointment, or, within ninety (90) Days after the expiration of any such stay, has not been vacated.

(12) "Bankruptcy Court" has the meaning set forth in Section 11.1 (2).

(13) "Btu" means British Thermal Unit which is the standard Unit for measuring the quantity of heat energy, such as the heat content of Fuel.

(14) "Business Day" means a Day other than Saturday, Sunday, a NERC holiday or a Day that is authorized as a holiday by banks in New York, New York.

(15) "Capacity Charge" means the amount to be paid by Buyer to Seller each month during the Delivery Term for the Monthly Demonstrated Capacity, as is further set forth in Section 9.2.

(16) "Capacity Price" has the meaning set forth in Exhibit A.

(17) "Claims" means all claims or actions filed by a Person, including fines or penalties, whether groundless, false or fraudulent, that relate to the subject matter of an indemnity, and the resulting losses, damages, expenses, attorney's fees and court costs, whether incurred by settlement or otherwise, and whether such claims or actions are filed prior to or after the expiration or termination of this Agreement.

(18) "Compressor Washes" means an offline water wash of the Facility's combustion turbine compressor(s).

(19) "Contract Term" means the term of this Agreement beginning on the Agreement Date and ending on the Termination Date.

(20) "Credit Rating" means with respect to a Party or any entity, on any date of determination, the respective ratings then assigned to such Party's or entity's unsecured, senior long-term debt (not supported by third party credit enhancement). In the event of any inconsistency in ratings by the two rating agencies (a "split rating"), the lowest assigned rating shall control.

(21) "Damages" has the meaning set forth in Section 13.1(1).

(22) "Day" means the 24-hour period beginning and ending at 12:00 midnight EPT.

(23) "Defaulting Party" has the meaning set forth in Section 11.1(1).

(24) "Delivery Point" means the high side of the Facility's step up transformer(s) at the point of interconnection with the Transmission Provider's system.

(25) "Delivery Term" means the period commencing at hour ending 0100 EPT on April 1, 2007 through and including hour ending 2400 EPT on the Termination Date.

(26) "Demonstrated Capacity" means the number of MWs (rounded to the nearest MW) of Energy and/or Ancillary Services which the Facility is capable of generating, less Energy used for Station Load, as demonstrated by the most recent performance test and corrected to sixty (60) degrees Fahrenheit and sixty percent (60%) relative humidity.

(27) "DIP Lender" means, collectively, General Electric Capital Corporation, as Agent and Lender and GECC Capital Markets Group, Inc. as Lead Arranger, with respect to the Debtor-In-Possession Agreement, dated as of November 5, 2003, among Mirant Corporation and certain of its subsidiaries.

(28) "Dispatch Notice" has the meaning set forth in Section 7.4(2).

(29) "Eastern Prevailing Time" or "EPT" means the prevailing time (*i.e.,* Standard Time or Daylight Savings Time) on any given Day in the Eastern Time Zone.

(30) "Electrical Interconnection Agreements" mean the interconnection agreement(s) between Seller and the Transmission Provider providing for the maintenance and operation of the Electrical Interconnection Facilities.

(31) "Electrical Interconnection Facilities" means the equipment necessary to connect the Units to the Transmission Provider's 230 kV transmission system.

(32) "Energy" means the electric energy in MWh to be delivered by Seller to Buyer pursuant to this Agreement as three-phase, alternating 60 Hertz current at the nominal voltage of the Delivery Point.

(33) "Energy Meters" means the Transmission Provider's revenue meters located at the Delivery Point.

(34) "Event of Default" has the meaning set forth in Section 11.1(1).

(35) "Exhibit" means any exhibit attached to this Agreement, which is hereby incorporated into this Agreement by reference.

(36) "Facility" means the dual-fueled electric generating facility consisting of Units 1, 2 and 3 owned by Seller in Pasco County, Florida, including all equipment used to produce the Demonstrated Capacity, Energy and Ancillary Services, buildings and

facilities, facility control systems, fire protection systems, potable, process, and sanitary water supply, treatment, storage, disposal, and transfer systems, the Electrical Interconnection Facilities, the Gas Interconnection Facilities and all related equipment necessary to accept Fuel at the Fuel Delivery Point including storage and transfer systems, and ingress and egress to the Facility Site.

(37) "Facility Site" means the parcel of land on which the Facility is located in Pasco County, Florida, in the Florida Power Corporation control area.

(38) "FERC" means the Federal Energy Regulatory Commission, or its successor.

(39) "Final Fuel Oil Inventory" means the amount of Fuel Oil in net gallons in Seller's Fuel Oil storage tank(s) at the Facility at the end of the Delivery Term, as measured at midnight on the date such inventory is transferred from Buyer to Seller.

(40) "Force Majeure Event" means an event or circumstance that prevents the performance by a Party of its obligations under this Agreement which is not within the reasonable control of, or the result of the negligence of, the claiming Party and which by the exercise of due diligence the claiming Party is unable to overcome or avoid. Force Majeure includes, without limitation, acts of God; strikes, lock-outs or other industrial disturbances; acts of the public enemy, terrorism, war (whether declared or not), blockades, insurrections, civil disturbances and riots, and epidemics; land slides, lightning, earthquakes, firestorms, hurricanes, tornadoes, floods, washouts, and extreme weather conditions impairing the operation of the Facility or the Transmission Provider's transmission system; bona fide events of force majeure claimed by third-party suppliers of transmission, Fuel or Fuel transportation; orders, directives, restraints, and requirements of any Governmental Authority; and any other similar causes not enumerated that are not within the reasonable control of the claiming Party and which prevent the performance by a Party of its obligations under this Agreement; provided that none of the following shall constitute a Force Majeure Event: (1) the loss of Buyer's markets or reductions in its load requirements, (2) Seller's ability to sell the Monthly Demonstrated Capacity, Energy and/or Ancillary Services at a price higher than the prices in this Agreement, (3) any Forced Outage or Forced Derate, except to the extent caused by an event that is otherwise a Force Majeure Event.

(41) "Forced Derate" means a curtailment at the Facility resulting from equipment failure or malfunction or a Force Majeure Event claimed by Seller which prevents the Facility from functioning at the Monthly Demonstrated Capacity while remaining in service, excluding hours for Planned Maintenance Outages.

(42) "Forced Derate Quantity" means the Monthly Demonstrated Capacity minus the Available Capacity during any Forced Derate (expressed in whole MWs).

(43) "Forced Derate Hours" has the meaning set forth in Exhibit D.

(44) "Forced Outage" means the Facility has been forced out of service by equipment failure or malfunction, excluding Planned Maintenance Outages and any Force Majeure Event claimed by Seller.

(45) "Forced Outage Hours" has the meaning set forth in Exhibit D.

(46) "FPSC" means the Florida Public Service Commission or any successor agency.

(47) "Fuel" means Gas and Fuel Oil.

(48) "Fuel Delivery Point" means either the Fuel Oil Delivery Point or Gas Delivery Point, as the case may be.

(49) "Fuel Oil" means number 2 Fuel Oil that meets the specifications set forth in Exhibit J or as approved by Seller.

(50) "Fuel Oil Delivery Point" means the hose connection at the unloading rack at the Facility.

(51) "GAAP" means Generally Accepted Accounting Principles.

(52) "Gas" means natural gas or any mixture of hydrocarbon gases or hydrocarbon gases and non-combustible gases consisting predominantly of methane.

(53) "Gas Delivery Point" means the point of interconnection between the Gas Transporter's pipeline and the Lateral Pipeline.

(54) "Gas Imbalance Charges" means any pipeline scheduling, imbalance, cashout, operational flow order or other similar pipeline penalties or charges resulting from failure to timely communicate to the pipeline, nominations, nomination changes or failure to timely adjust nominations.

(55) "Gas Index" or "GI" has the meaning set forth in Section 6.1(3).

(56) "Gas Interconnection Agreement" means the interconnection agreement between Seller and the Gas Transporter providing for the operation and maintenance of the Gas Interconnection Facilities.

(57) "Gas Interconnection Facilities" means the lateral pipeline and other equipment necessary to connect the Facility with the Gas Transporter's transportation system.

(58) "Gas Meter" means the Gas meter located at the Gas Delivery Point.

(59) "Gas Transporter" means Florida Gas Transmission Company or its successor.

(60) "Generator Imbalance Fees" means any imbalance fees, penalties or other similar fees, costs or penalties imposed by any Transmission Provider.

(61) "Governmental Authority" means any federal, state or local governmental body, any governmental, military, regulatory or administrative agency, commission, body or other authority exercising or entitled to exercise any administrative, executive, judicial, legislative, policy, regulatory or taxing authority, jurisdiction or power, any court or governmental tribunal, or any applicable independent system operator, regional transmission organization, regional power pool, reliability council or other regional entity performing similar functions.

(62) "Governmental Rule" means any law, rule, regulation, ordinance, order, code, permit, interpretation, judgment, decree, directive, guideline, policy or similar form of decision of any Governmental Authority having the effect and force of law.

(63) "Guaranteed Availability" means the percentage of time Seller guarantees that the Facility will be available for service, up to the Monthly Demonstrated Capacity, whether dispatched by Buyer or not, during all On-Peak Hours of each Peak Month or Non-Peak Month during the Delivery Term, as further set forth in Section 6.3.

(64) "Guaranteed Heat Rate" or "GHR" has the meaning set forth in Section 6.1(2).

(65) "Guaranty" means a guaranty from an Acceptable Guarantor substantially in the form of Exhibit K.

(66) "Heat Rate" means the measure of efficiency in converting input fuel into electricity, expressed in Btu/kWh.

(67) "Heat Rate Differential" or "HRD" has the meaning set forth in Section 6.1(2).

(68) "Heat Rate Payment" or "HRP" has the meaning set forth in Section 6.1(3).

(69) "HHV" means higher heating value in Btu/lb or Btu/Standard Cubic Foot.

(70) "Initial Fuel Oil Inventory" means the amount of Fuel Oil in net gallons in Seller's Fuel Oil storage tank(s) at the Facility at the beginning of the Delivery Term, as measured at midnight on the date such inventory is transferred from Seller to Buyer.

(71) "Interest Rate" means a per annum rate of interest equal to the Prime Rate plus two percentage points (2%); provided, the Interest Rate shall never exceed the maximum rate permitted by applicable Governmental Rules.

(72) "kW" means kilowatt.

(73) "kWh" means kilowatt-hour.

(74) "Lateral Pipeline" is the pipeline owned by Florida Gas Transmission Company which connects the Facility to the Gas Transporter's pipeline.

(75) "Letter of Credit" means an unconditional, irrevocable, non-transferable, standby letter of credit naming a Party as the sole beneficiary, issued by a United States commercial bank, a United States financial institution, or the United States branch of a foreign commercial bank, with a minimum of one billion U. S. dollars capital and surplus, in each case with a Credit Rating of at least A by S&P and A2 by Moody's, in a form reasonably acceptable to the Party who would be protected by the Letter of Credit under this Agreement. All costs relating to any Letter of Credit shall be for the account of the Pledging Party.

(76) "MMBtu" means one million British Thermal Units.

(77) "Monthly Demonstrated Capacity" means the Demonstrated Capacity multiplied by the applicable monthly adjustment factor, as specified in Exhibit L, and rounded to the nearest MW. The Monthly Demonstrated Capacity reflects the Demonstrated Capacity adjusted each month based on temperature and other conditions normally expected during such month.

(78) "Moody's" means Moody's Investor Services, Inc., or its successor.

(79) "MW" means a megawatt. One MW is equal to 1,000 kW.

(80) "MWh" means a megawatt-hour. One MWh is equal to 1,000 kWh.

(81) "Non-Defaulting Party" has the meaning set forth in Section 11.1(1)(a).

(82) "Non-Peak Month" means all hours during each of the following months: March, April, October, November and December.

(83) "On-Peak Hours" means the sixteen (16) hours during each Business Day from hour ending 0800 EPT through and including hour ending 2300 EPT.

(84) "Operational Limitations" means the physical operating parameters of the Facility as set forth in Exhibit G.

(85) "Peak Month" means all hours during each of the following months: January, February, May, June, July, August and September.

(86) "Person" means an individual, partnership, corporation, limited liability company, association, trust, joint venture, unincorporated organization, Governmental Authority, or other type of entity.

(87) "Planned Maintenance Outage" means a planned curtailment or outage at one or more Units at the Facility for the purpose of performing maintenance on the Units, as further described in Section 4.3.

(88) "Pledging Party" means the Party required to provide Security pursuant to Section 19.

(89) "Prime Rate" means the prime lending rate as may from time to time be published in *The Wall Street Journal* under "Money Rates," or if such rate is no longer published, an index specified by *The Wall Street Journal* as the replacement rate. If no replacement rate is specified, the Parties will agree on a replacement index that most accurately corresponds to such rate.

(90) "Prudent Industry Practice" means any of the spectrum of practices, methods, standards and acts engaged in or adopted by a significant portion of the electric power industry that, at a particular time, in the exercise of reasonable judgment in light of the facts known or that should reasonably have been known at the time a decision was made, could have been expected to accomplish the desired result consistent with good business practices, reliability, economy, safety and expedition, and which practices, methods, standards and acts reflect due regard for operation and maintenance standards recommended by the Facility's equipment suppliers and manufacturers, operational limits, and all applicable Governmental Rules. Prudent Industry Practice is not intended to be limited to the optimum practice, method, standard or act to the exclusion of all others but rather to be a spectrum of acceptable practices, methods, standards or acts.

(91) "Run Hour" means any increment of an hour that a Unit at the Facility is in operation including, without limitation, hours required for start up and shut down. Such hours shall begin when the control room operator at the Facility initiates a start sequence.

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

(93) "Secured Party" means the Party entitled to demand and receive Security pursuant to Section 19.

(94) "Security" means a Guaranty, Letter of Credit or cash in the form of currency of the United States of America.

(95) "Settlement Amount" means, with respect to this Agreement and the Non-Defaulting Party, the net losses and costs, if any, expressed in U.S. dollars, which such Non-Defaulting Party incurs as a result of the termination of this Agreement including, at the Non-Defaulting Party's option, all (i) net losses and costs incurred by the Non-Defaulting Party to (a) purchase and/or sell, as applicable, capacity, energy and ancillary services equally useful as the Monthly Demonstrated Capacity, Energy and Ancillary Services purchased and sold under this Agreement and (b) maintain, terminate, obtain or

re-establish any trading positions entered into by a Party to hedge its obligations under this Agreement, and (ii) reasonable attorney's fees incurred by the Non-Defaulting Party in connection with the termination of this Agreement. If the Settlement Amount is a positive number, the Settlement Amount shall be due to the Non-Defaulting Party from the Defaulting Party. If the Non-Defaulting Party does not incur any net losses and costs as a result of the termination of this Agreement, the Settlement Amount shall be deemed to be zero (0). In calculating a Settlement Amount, the Non-Defaulting Party shall discount to present value (in a commercially reasonable manner based on the Interest Rate for the applicable period) any amount which would otherwise have been due at a later date and shall add interest at the Interest Rate to any amount due prior to the date of the calculation.

(96) "Start Charge" means the total amount to be paid by Buyer to Seller each month during the Delivery Term for all Successful Starts during such month, as is further set forth in Section 9.4.

(97) "Start Fee" has the meaning set forth in Exhibit C.

(98) "Station Load" means the power required by the auxiliary equipment necessary for the operation of the Facility including, but not limited to, pumps, fans, etc.

(99) "Successful Start" has the meaning set forth in Exhibit G, as applicable for each Unit.

(100) "Termination Date" has the meaning set forth in Section 2.1.

(101) "Tested Heat Rate" or "THR" has the meaning in Section 6.1(1).

(102) "Transmission Ancillary Services" means those ancillary services that Buyer must purchase from the Transmission Provider as necessary to support the transmission of Energy and/or Ancillary Services from the Delivery Point.

(103) "Transmission Provider" means Florida Power Corporation or any successor thereto that provides electric transmission services to support the transmission of Energy and/or Ancillary Services from the Delivery Point.

(104) "Transmission Provider's Protocols" means the documents adopted by the Transmission Provider, as amended from time to time, that contain the scheduling, operating, planning, reliability and settlement policies, rules, guidelines, procedures, standards and criteria of the control area.

(105) "Unit(s)" mean the General Electric 7FA combustion turbine (Unit 1), the General Electric 7FA combustion turbine (Unit 2) and the General Electric 7FA combustion turbine (Unit 3) in a simple cycle configuration, as applicable.

(106) "VOM Charge" means the variable amount, if any, to be paid by Buyer to Seller for the MWh of Energy and/or Ancillary Services delivered by Seller to Buyer in a month relating to the variable operation and maintenance costs of the Facility (excluding Fuel costs), as is further set forth in Section 9.3 and Exhibit B.

(107) "VOM Price" has the meaning set forth in Exhibit B.

2. TERM; CONDITIONS PRECEDENT; SURVIVAL

2.1 Term.

The Contract Term and Delivery Term shall continue through April 30, 2014, unless terminated prior to such date pursuant to this Agreement (the "Termination Date").

2.2 Conditions Precedent to the Parties' Performance.

Performance under this Agreement of any obligation to provide or pay for the tolling arrangement shall arise only upon the satisfaction of the following conditions:

(1) Notwithstanding any other provision of this Agreement, approval by the creditors' committee(s) and the Bankruptcy Court, as applicable, and receipt of any waivers from the DIP Lender, which may be required, shall be conditions precedent to Seller's performance under this Agreement. The approval of the Bankruptcy Court shall include a court order that confers rights to the Buyer under this Agreement that are acceptable to the Buyer. In the event such approval(s) has not been obtained within ninety (90) Days after the Agreement Date, either Party may terminate this Agreement upon written notice to the other Party with no obligation or liability under this Agreement to the other Party resulting from such termination.

(2) Notwithstanding any other provision of this Agreement, this Agreement and the rights and obligations of the Parties set forth herein are expressly subject to and contingent upon approval in its entirety by a final, non-appealable order of the FPSC within one hundred twenty (120) Days after the Agreement Date. In the event such approval has not been obtained within one hundred twenty (120) Days after the Agreement Date, either Party may terminate this Agreement upon written notice to the other Party with no obligation or liability under this Agreement to the other Party resulting from such termination.

2.3 Survival.

As of the Termination Date, the Parties shall no longer be bound by the terms and conditions hereof, except (i) to the extent necessary to enforce any rights and the obligations of the Parties, including, but not limited to, payment obligations, arising under this Agreement prior to such Termination Date and (ii) the obligations of the Parties hereunder with respect to confidentiality, audit and indemnification shall survive any termination of this Agreement and shall continue for a period of two (2) years following such Termination Date, provided that such obligations with respect to indemnification shall continue only with respect to Claims for

indemnification based upon events or circumstances occurring or arising on or before the Termination Date.

3. CONTRACT OPTIONS

3.1 Facility Acquisition Option.

Seller shall have the option at any time during the Contract Term to request Buyer to enter into negotiations to purchase the Facility and Facility Site. Buyer shall have the option at any time during the Contract Term to request Seller to enter into negotiations to sell the Facility and Facility Site. The Parties shall negotiate in good faith to develop an agreement to sell/purchase the Facility and Facility Site. The Parties acknowledge and agree that neither this Section 3.1 nor any other provision in this Agreement is intended to constitute any binding offer or agreement to execute or complete a sale of the Facility by Seller to Buyer.

3.2 Right of First Offer and Last Refusal to Purchase Facility.

In the event that Seller determines that it desires to sell the Facility or all or the majority of the stock or other ownership interests of Seller or Seller receives an offer to purchase the Facility from a third party, Buyer shall have the right of first offer to purchase the Facility or all or the majority of the stock or other ownership interests of Seller during the Contract Term of this Agreement. Seller shall present the terms and purchase price to Buyer prior to offering to make such sale to any third party, and, in the event Seller receives an offer to purchase the Facility from a third party, Seller shall present such terms and purchase price to Buyer. Buyer shall have forty-five (45) Days to accept or decline the offer to purchase. If Buyer declines the offer, Seller shall be free to present the offer to, and to enter into a contract of sale with, any third party upon substantially the same material terms and the same purchase price or a higher price. Seller shall not be permitted to make such sale to a third party at a price that is lower than the price offered to Buyer. Therefore, before Seller may offer a lower sale price to a third party, Seller must first re-offer the same lower price and the same material terms to the Buyer and the Buyer, within forty-five (45) Days of such re-offer, must accept or decline Seller's offer to purchase/sell. The Parties acknowledge and agree that neither this Section 3.2 nor any other provision in this Agreement is intended to constitute any binding offer or agreement to execute or complete a sale of the Facility by Seller to Buyer.

3.3 Generation Addition Option.

Buyer shall have the option at any time during the Contract Term to request Seller to negotiate in good faith to add one or more units to the Facility, subject to (i) permit limits including, without limitation, all environmental permits and modifications thereto, (ii) the ability of the Facility Site to physically accommodate such additional units in light of established, intended or proposed uses of the Facility Site at the time, and (iii) Seller's obligations under any existing contract(s) with a third party involving the Facility. If Buyer elects to exercise the foregoing option, Buyer will provide written notice to Seller. Upon receipt of Buyer's notice, the Parties shall negotiate in good faith to develop mutually agreeable amendments to the Agreement

to reflect the additional generating units. Such amendments will include but will not be limited to adjustments to the pricing and term of the Agreement. If any third party contract involving the Facility is in effect at the time Buyer elects to exercise its generation addition option pursuant to this Section 3.3., Seller's obligation to commence or continue negotiations with Buyer regarding the additional generation shall be expressly conditioned on (i) the determination by Seller, in its sole discretion, that such negotiations or generation addition would not cause Seller to breach or fail to perform any of its obligations under the existing contract(s) and (ii) Seller obtaining a waiver in writing from the applicable third party whereby such third party agrees, in its sole discretion, to waive any rights which would be effected thereby. The Parties acknowledge and agree that neither this Section 3.3 nor any other provision in this Agreement is intended to constitute any binding offer or agreement to execute or complete an addition of any unit at the Facility. Furthermore, Seller is not required to make any capital expenditure or acquire financing to provide for the addition of any unit(s).

4. OPERATION OF THE FACILITY

4.1 Permits.

Seller shall, at its expense, acquire and maintain in effect during the Contract Term, from any and all Governmental Authorities with jurisdiction over Seller and/or the Facility, all permits and approvals, in each case necessary for the ownership, operation and maintenance of the Facility in accordance with this Agreement, and all Governmental Rules and for the Facility to operate at the Demonstrated Capacity. Seller shall be responsible for, and bear all costs of, compliance with all of its permits, including its air permit, and all emissions laws and regulations. Notwithstanding the foregoing, Buyer shall be responsible for all costs associated with emissions credits required for the operation of the Facility as dispatched by Buyer. Seller shall transfer to Buyer any emissions credits for the Delivery Term received by Seller from any Governmental Authority related to the Facility.

4.2 Prudent Industry Practice.

Seller shall cause the Facility to be operated and maintained in accordance with Prudent Industry Practice and in accordance with the terms and conditions of this Agreement.

4.3 Maintenance Outages.

(1) Schedule of Planned Maintenance Outages.

(a) Seller shall not be obligated to deliver Energy and/or Ancillary Services pursuant to this Agreement during Planned Maintenance Outages. The Facility shall not be considered unavailable during Planned Maintenance Outages for the purpose of calculating the Actual Equivalent Availability of the Facility.

(b) Buyer agrees that Seller must perform Planned Maintenance Outages at the Facility in an effort to reduce and prevent Forced Derates and/or Forced Outages

and to maintain the efficiency of the Units. Such Planned Maintenance Outages include, but are not limited to, the Unit manufacturer's recommended and required maintenance, Compressor Washes and any preventive maintenance that maintains or improves the reliability of the Facility. The Planned Maintenance Outage schedule shall be based on (i) the Unit manufacturer's equivalent start and runtime guidelines, (ii) Prudent Industry Practice, (iii) the long-term service agreement for the Units, (iv) the actual dispatch of the Units and (v) the Unit's point in the maintenance cycle and the potential impacts to the Unit and costs if the maintenance schedule is changed. On or before October 1, 2006 and on each October 1st thereafter during the Delivery Term, Seller shall provide to Buyer, in writing, its proposed schedule of Planned Maintenance Outages for the next calendar year and the reason for such Planned Maintenance Outages. Seller shall not schedule Planned Maintenance Outages during the On-Peak Hours of the Peak Months without Buyer's prior written consent.

(c) The Parties shall have the right to make reasonable adjustments to the schedule of Planned Maintenance Outages. The Parties shall agree upon the adjustments to the Planned Maintenance Outages schedule at least forty-five (45) Days in advance of each Planned Maintenance Outage and the Parties shall use reasonable judgment when requesting and agreeing to the adjustments. In the event the Unit manufacturer issues a new technical bulletin which requires immediate maintenance to be performed, Seller shall notify Buyer of the circumstances surrounding such maintenance and Seller will work together with Buyer to schedule the maintenance outage notwithstanding the short notice involved.

(d) In addition to the schedule described above, Planned Maintenance Outages shall be deemed to include (i) maintenance performed within the minimum shut down period for a Unit as specified in the Operational Limitations and/or (ii) hours required for maintenance to the extent that Seller has obtained Buyer's prior written approval regarding the hours required to perform such maintenance.

(2) Duration of Planned Maintenance Outages. Unless otherwise agreed to by Buyer, Planned Maintenance Outages shall be limited to (i) ten (10) Days per Unit each calendar year in which there is no minor inspection, hot gas path inspection, or major inspection; (ii) thirteen (13) Days per Unit each calendar year in which a minor inspection (e.g. combustion inspection) occurs, of which a minimum of eight (8) Days are consecutive; (iii) twenty-five (25) Days per Unit each calendar year in which a hot gas path inspection occurs, of which a minimum of twenty (20) Days are consecutive; and (iv) forty-five (45) Days per Unit each calendar year in which a major inspection occurs, of which forty (40) Days are consecutive. If a minor inspection and a hot gas path inspection are to be performed on a Unit during the same calendar year, the limits in section 4.3(2)(iii) shall apply. If a minor inspection and/or a hot gas path inspection are to be performed on a Unit during the same calendar year as a major inspection, the limits in Section 4.3(2)(iv) shall apply. Seller shall use commercially reasonable efforts to complete any Planned

Maintenance Outage in a timely manner. During each Planned Maintenance Outage, Seller shall keep Buyer apprised of the status and the expected duration of the Planned Maintenance Outage.

(3) Compressor Wash. If the maintenance schedule from the Unit manufacturer requires Seller to perform a Compressor Wash during the Peak Months, Seller shall use commercially reasonable efforts to schedule such Compressor Wash to ensure that the Facility is available during the On-Peak Hours of the Peak Months.

(4) Maintenance-related Charges. If Seller is required to start and operate a Unit for maintenance purposes, Seller and Buyer shall work together such that the maintenance related start and operation can be completed when the Energy and/or Ancillary Services from the Facility is being dispatched by the Buyer. If the Seller and Buyer are unable to complete the maintenance related start and operation during a time when the Buyer has dispatched the Facility, Seller shall notify Buyer of the date of the maintenance related start and operation at least five (5) Business Days in advance. Buyer shall provide, at its expense, all Fuel required for the start and operation of the Unit and schedule the quantity of Energy and/or Ancillary Services produced during such operation in a commercially reasonable manner. Buyer shall be entitled to all revenues associated with the sale of Energy and/or Ancillary Services from the Facility during the period of time the Unit is being operated for maintenance purposes. If the Facility is not dispatched by Buyer during the maintenance related start and operation period, Seller shall reimburse Buyer an amount equal to the positive difference, if any, obtained by subtracting (i) the cost of Fuel plus the Start Charge and the VOM Charge payable by Buyer during the start and operation period from (ii) the Energy revenues received by Buyer during such period.

4.4 Station Load.

Seller shall be responsible for Station Load at all times including during all Planned Maintenance Outages, Forced Derates, and Forced Outages, and during start up and shut down of a Unit, and any periods when the Facility has not been dispatched. Seller will net Station Load from the maximum capacity of the Facility to determine the Demonstrated Capacity.

4.5 Performance Test.

(1) During the second quarter of 2007 and in January of each year of the Delivery Term thereafter or any date as mutually agreed by the Parties, Seller shall conduct a performance test of the Facility to calculate the Demonstrated Capacity and the Heat Rate of the Facility. Buyer and Seller shall work together such that the performance test can be completed while the Facility is being dispatched by the Buyer. If the Facility is dispatched by Buyer during the test period, Buyer shall pay for all required Gas, the Start Charge and VOM Charge. If the Buyer and Seller are unable to complete the test during a time when the Buyer has dispatched the Facility, Seller shall notify Buyer of the date of the performance test at least five (5) Business Days in advance of such test. Buyer shall provide, at its expense, all Gas required for the performance test and schedule the quantity of Energy produced during the test in a commercially reasonable manner. Buyer shall be entitled to all revenues associated with the sale of the test Energy from the Facility. If the Facility is not dispatched by Buyer during the test period, Seller shall

reimburse Buyer an amount equal to the positive difference, if any, obtained by subtracting (i) the cost of test Gas plus the Start Charge and the VOM Charge payable by Buyer during the test period from (ii) the test Energy revenues received by Buyer. Buyer or its designated representative shall have the option to witness any performance test.

(2) Buyer and Seller each shall have the right to perform up to two (2) additional optional performance tests of the Facility during each year. If Buyer performs an additional performance test and the Demonstrated Capacity and the Tested Heat Rate resulting from such test is within two percent (2%) of the most recent performance test, then Buyer shall pay the cost of such optional performance test. If the Demonstrated Capacity and the Tested Heat Rate resulting from such test is not within two percent (2%) of the most recent performance test, then Seller shall pay the cost of such optional performance test.

(3) The Monthly Demonstrated Capacity and the Tested Heat Rate shall be based on the results of the most recent performance test. Seller shall provide Buyer a copy of the performance test results as soon as such results become available but no later than two (2) weeks after the conclusion of the performance test.

4.6 Operating Procedures.

The Parties shall develop operating procedures no later than thirty (30) Days prior to the start of the Delivery Term that will cover the protocols under which the Parties will perform their respective obligations under this Agreement. The operating procedures shall be consistent with the Gas Interconnection Agreement, Electrical Interconnection Agreement, the Transmission Provider's tariff, the Transmission Provider's Protocols, all metering systems, any electronic communication systems and the Operational Limitations in Exhibit G. The operating procedures shall include, without limitation, the method of daily communications, the delivery of Fuel to the Facility, dispatch procedures, notices regarding the availability of the Facility, identification and contact of key personnel and operations logs.

4.7 Performance Monitoring.

During the Delivery Term, the Buyer shall have the right, at its sole expense, to install and operate Facility operations performance monitoring equipment upon written notice to Seller, provided that the installation of such equipment would not hinder Seller's performance of its obligations under this Agreement. Seller shall assist Buyer in the installation of such equipment, including without limitation, server and communications media. Seller shall have the right to utilize the monitoring equipment to obtain Facility data. In the event Buyer suggests Facility upgrades or improvements to Seller based on Facility data obtained from the monitoring equipment, Seller shall not be obligated to incur any costs to make such upgrades or improvements unless mutually agreed upon by the Parties. The performance information to be monitored is listed in Exhibit F.

4.8 Operation of the Facility by Buyer.

(1) Except when an Event of Default with respect to Buyer has occurred and is continuing, during the Delivery Term, (i) if Seller Abandons the Facility and such Abandonment continues for a period exceeding seven (7) consecutive Days, or (ii) if Seller fails for a period of seven (7) consecutive Days to provide Buyer the Monthly Demonstrated Capacity, Energy and/or Ancillary Services from the Facility in accordance with this Agreement and Seller's failure is not excused by a Force Majeure Event, Forced Outage, Forced Derate, Planned Maintenance Outage or Buyer's failure to perform any of its obligations hereunder, then Buyer may, but is not obligated to, assume operational responsibility for the Facility to continue operation, complete any necessary repairs, which are not being undertaken by Seller, or take such other steps as are reasonable in the circumstances, or may designate a third party or parties to do the same, so as to assure uninterrupted availability and deliverability of the Monthly Demonstrated Capacity, Energy and/or Ancillary Services from the Facility in accordance with this Agreement. In such an event, Seller agrees to fully cooperate with Buyer in providing access to the Facility, and permitting Buyer to operate the Facility as provided herein. Buyer's exercise of its operation rights of the Facility under this Section 4.8(1) shall not confer ownership rights of the Facility to Buyer.

(2) During any period of Buyer's operation of the Facility pursuant to Section 4.8(1), any payments to Seller shall be made only after any and all reasonable costs and expenses incurred by Buyer in exercising its rights under this Section 4.8 are deducted.

(3) Except as provided in Section 4.8(6) below, Buyer's exercise of its rights under this Section 4.8 to operate the Facility shall not be deemed an assumption by Buyer of any liability of Seller under any agreement between Seller and any other party.

(4) In the event Buyer exercises its right to assume operation of the Facility pursuant to Section 4.8(1), Buyer shall not have the right to terminate this Agreement as a result of Seller's Abandonment of the Facility, failure to deliver as described in Section 4.8(1) or for any other reason during the period the Facility is being operated by Buyer.

(5) Buyer may continue to operate the Facility until the earlier of:

(a) Seller provides written notice to Buyer that it is prepared to resume operations at the Facility and such notice describes the impediment concerning Seller's operation of the Facility and explains how the impediment has been remedied. Seller and Buyer will mutually agree to an orderly and commercially reasonable transition, including the timing of the transition, of the operation of the Facility from Buyer to Seller;

(b) the project lender, any financing party or a designee of any such party, after providing written notice to Buyer of its intent to do so, assumes operation of the Facility, provided that it has been demonstrated to Buyer's reasonable satisfaction that the project lender, financing party or a designee of any such party,

as applicable, is technically qualified to operate the Facility in accordance with this Agreement;

(c) Buyer and Seller mutually agree to terminate this Agreement; or

(d) An Event of Default with respect to Buyer occurs and is continuing related to Buyer's failure to perform any of its obligations under this Section 4.8.

(6) Buyer agrees that during any period it is in possession of the Facility under this Section 4.8, it shall operate the Facility in accordance with Prudent Utility Practice, the Unit manufacturer's recommended and required maintenance schedule and the Operational Limitations in this Agreement. Further, Buyer shall comply with applicable Governmental Rules and maintain in full force and effect all permits, licenses and consents required by any Governmental Authority related to the operation and maintenance of the Facility. Buyer shall adhere to the maintenance schedule as required by Seller's service agreement(s) with any other party. Buyer shall be liable for any damages to the Facility while operating same pursuant to Section 4.8(1). During the period while Buyer is operating the Facility, Buyer shall carry and maintain, or cause to be carried and maintained, no less than the insurance coverages listed in Exhibit I, applicable to all operations undertaken by Buyer pursuant to Section 4.8(1). Such minimum amounts may be satisfied either by primary insurance or by any combination of primary and excess/umbrella insurance. At least two (2) Business Days prior to assuming operational control of the Facility under this Section 4.8, Buyer shall provide Seller with written documentation as evidence that Buyer has obtained the insurance coverages required under this Section 4.8(6). Buyer's right to assume operational control of the Facility under this Section 4.8 shall be expressly subject to Seller's verification that Buyer has obtained such insurance coverages prior to the commencement date of Buyer's operation of the Facility. Buyer shall comply with and maintain in full force and effect any third party contract related to the Facility, unless Seller notifies Buyer that (i) the performance of the other party to any such contract was the cause of the problem which led to Buyer's assumption of operational responsibility for the Facility, or (ii) such other party is in default under any such contract and that Seller shall suspend or terminate its performance under such contract. Buyer shall not cause any default, breach, invalidation or termination of any agreements between Seller and any other party. Seller shall provide Buyer with copies of all such contracts, permits, licenses and consents within ten (10) Days of receiving notice that Buyer intends to take possession of the Facility under this Section 4.8.

5. CAPACITY; ENERGY; AND ANCILLARY SERVICES

5.1 Monthly Demonstrated Capacity.

Subject to the terms and conditions of this Agreement, Seller agrees to make available to Buyer, on an exclusive basis, during the Delivery Term, and Buyer agrees to accept, the Monthly Demonstrated Capacity at the Delivery Point. In consideration, Buyer agrees to pay the Capacity Charge. As of the Agreement Date, the Demonstrated Capacity of the Facility is 517 MW.

5.2 Energy.

Subject to the terms and conditions of this Agreement, Seller agrees to make available to Buyer, on an exclusive basis, and to deliver to Buyer during the Delivery Term, and Buyer agrees to receive, the Energy Buyer has dispatched up to the Monthly Demonstrated Capacity. In consideration, Buyer agrees to pay the Start Charge and the VOM Charge, as applicable.

5.3 Ancillary Services.

Subject to the terms and conditions of this Agreement, Seller agrees to make available to Buyer, on an exclusive basis, and to deliver to Buyer during the Deliver Term, and Buyer agrees to receive, the Ancillary Services as scheduled by Buyer. The Parties acknowledge and agree that certain of such Ancillary Services would require that a portion of the Monthly Demonstrated Capacity of the Facility be held in reserve for such Ancillary Services to be sold or provided (or as may be used by Buyer for its own account) from the Facility and that the combination of Energy and Ancillary Services to be sold from the Facility by Buyer shall not exceed the Monthly Demonstrated Capacity of the Facility. Any Ancillary Services which Seller may be required to provide to the Transmission Provider(s) under the terms of the Electrical Interconnection Agreement or under the Transmission Provider's Protocols shall be deducted from the Monthly Demonstrated Capacity made available to the Buyer under this Agreement; provided, however, such deduction shall not constitute a Forced Derate or Forced Outage.

5.4 Exclusive Rights.

So long as no Event of Default has occurred and is continuing with respect to Buyer, if Buyer does not call on all of the Monthly Demonstrated Capacity, Energy and/or Ancillary Services of the Facility, pursuant to the dispatch and scheduling provisions in this Agreement, Seller shall not have the right to sell any such remaining Monthly Demonstrated Capacity, Energy and/or Ancillary Services from the Facility to any third party during the Delivery Term without the prior written consent of Buyer except as may be required pursuant to any Electrical Interconnection Agreement between Seller and any Transmission Provider(s) or as may be required by any Governmental Authority. However, consistent with Section 24.1, if an Event of Default has occurred and is continuing with respect to Buyer, Seller shall use commercially reasonable efforts to mitigate its losses resulting from such Event of Default by selling the Monthly Demonstrated Capacity, Energy and Ancillary Services to third parties during any period of suspension of Seller's performance obligations hereunder pursuant to Section 11.2(1).

5.5 Energy Delivery Point.

All deliveries and receipts of Energy shall be made and measured at the Delivery Point.

5.6 Title, Risk of Loss and Indemnity.

(1) As between the Parties, Seller shall be deemed to be in exclusive possession and control (and responsible for any damages or injury caused thereby) of the Energy and Ancillary

Services prior to the Delivery Point, and Buyer shall be deemed to be in exclusive possession and control (and responsible for any damages or injury caused thereby) of the Energy and Ancillary Services at and from the Delivery Point. Title to the Energy and Ancillary Services and exclusive rights to the Monthly Demonstrated Capacity shall remain at all times with Buyer. Each of Seller and Buyer shall and hereby does indemnify, defend and hold harmless the other Party from any Claims arising from any act, failure to act or incident relating to Energy and Ancillary Services occurring when the Energy and Ancillary Services is under its possession and control.

(2) Seller warrants that the Energy delivered by Seller and the Ancillary Services available from the Facility shall be free and clear of all liens, Claims and encumbrances arising prior to the Delivery Point and warrants that the Monthly Demonstrated Capacity is free and clear of liens, Claims and encumbrances.

5.7 Transmission Services.

Buyer shall arrange, either directly or indirectly through a third party, for all transmission service and Transmission Ancillary Services and shall pay all costs pursuant to the Transmission Provider's tariff and the Transmission Provider's Protocols including, without limitation, all costs associated with line losses, necessary to transmit the Energy and Ancillary Services delivered under this Agreement from the Delivery Point to any point at which Buyer redelivers the Energy and Ancillary Services to its customer(s).

5.8 Electrical Interconnection Agreement.

Seller has entered into an Electrical Interconnection Agreement with the Transmission Provider and shall maintain such Electrical Interconnection Agreement in full force and effect throughout the Delivery Term.

5.9 Energy Meters.

Energy and Ancillary Services delivered by Seller shall be measured by the Energy Meters at the Delivery Point. The Transmission Provider shall own, operate, maintain and test the Energy Meters at the Delivery Point. Seller shall coordinate with the Transmission Provider and Buyer with respect to the maintenance and testing of Energy Meters consistent with the Electrical Interconnection Agreement and Prudent Industry Practice.

6. HEAT RATE AND GUARANTEED AVAILABILITY

6.1 Heat Rate.

(1) Heat Rate Test. Each year during the performance test described in Section 4.5, Seller shall conduct a Heat Rate test of the Facility. All three Units will be tested simultaneously on Gas. The Heat Rate shall be equal to the quotient, expressed in Btu/kWh, of (i) the HHV of Gas consumed by the Facility during the test period divided by (ii) the amount of Energy

generated by the Facility and delivered to the Delivery Point during such test period (the "Tested Heat Rate" or "THR"). Although the Heat Rate test shall be conducted using Gas only, the THR shall be deemed the same regardless of whether the Facility is consuming Gas or Fuel Oil.

(2) Heat Rate Differential. After each Heat Rate test, a Heat Rate Differential ("HRD"), expressed as Btu/kWh, shall be calculated using one of the formulas below depending on whether the THR is above or below the GHR.

(a) If THR > GHR, then HRD = [THR – (1.03 x GHR)]; or
(b) If THR < GHR, then HRD = [(0.97 x GHR) – THR].

Where: Guaranteed Heat Rate ("GHR") = 10,400 Btu/kWh

(3) Heat Rate Payment. Seller shall calculate a Heat Rate Payment ("HRP") on a daily basis pursuant to the formula below. If the HRD is negative or zero, the HRP will be equal to zero. Seller shall pay Buyer the HRP if the THR is greater than the GHR. Buyer shall pay Seller the HRP if the THR is less than the GHR. The HRP shall be calculated as follows:

HRP = (DE x HRD x GI) ÷ 1000

Where:

DE = total delivered Energy and/or Ancillary Services (MWh) for the applicable Day

HRD = Heat Rate Differential currently in effect for the applicable Day (Btu/kWh)

GI = the Gas Daily Midpoint (GDM) price as published in the Platts Gas Daily, Daily Price Survey for the specified "Flow Date" in $/MMBtu. The GDM location will be the "Florida Gas, Zone 2" Midpoint price for the Day of Gas flow plus the applicable Florida Gas Transmission (FGT) FTS-1 fuel and commodity cost to transport from FGT Zone 2 to the FGT Market Area for the applicable month of flow. If no "Florida Gas, Zone 2" price is published for such Day, then the GDM price shall be the average of the following: 1) the price for the first Day for which a price is published that next precedes the relevant Day; and 2) the price for the first Day for which a price is published that next follows the relevant Day.

The HRP for each Day during each month of the Delivery Term shall be included on the monthly statement sent to Buyer and paid pursuant to Section 12.1.

6.2 Availability of the Facility on April 1, 2007.

(1) Unless excused by a Force Majeure Event, if Seller fails to make the Facility available for operation on April 1, 2007 in accordance with this Agreement, then Seller shall pay Buyer twenty-five thousand dollars ($25,000) per Day for each Day that Seller fails to make the Facility available for operation on and after April 1, 2007. Seller's obligation to make such payment to Buyer due to the Facility's unavailability shall end on the Day on which Seller provides written notice to Buyer that the Facility is available for dispatch by Buyer subject to the terms of this Agreement. Buyer shall not be required to pay Seller a pro-rata portion of the Capacity Charge for each Day that Seller fails to make the Facility available for operation on and after April 1, 2007.

(2) The damages to paid by Seller to Buyer under Section 6.2(1) shall be Buyer's sole and exclusive remedy for the failure of the Delivery Term to start on April 1, 2007. If Seller is required to pay damages to Buyer under Section 6.2(1), then the terms and conditions under Section 6.3 shall not be applicable.

6.3 Guaranteed Availability during the Delivery Term.

(1) Unless excused by (i) Buyer's failure to meet its obligations under this Agreement or (ii) a Planned Maintenance Outage, Seller agrees that the Guaranteed Availability of the Facility shall be ninety-eight percent (98%) during all On-Peak Hours of each Peak Month and ninety-five percent (95%) during all On-Peak Hours of each Non-Peak Month. Seller shall calculate the Actual Equivalent Availability of the Facility for each month during the Delivery Term in accordance with the formula set forth in Exhibit D. If the Actual Equivalent Availability is less than the Guaranteed Availability for the respective Peak Month or Non-Peak Month, Seller shall pay Buyer the Availability Rebate as set forth in Exhibit E.

(2) During the Delivery Term, the reduction to the Capacity Charge as described in Sections 6.3(1) and 9.2(3) shall be Buyer's sole and exclusive remedy for Seller's failure to meet the Guaranteed Availability of the Facility or to deliver Energy and/or Ancillary Services to Buyer when scheduled.

7. SCHEDULING AND DISPATCH

7.1 Dispatch.

During the Delivery Term, Buyer may dispatch the Facility, up to the Available Capacity, on a Day ahead or intra-Day basis provided that any dispatch schedules shall be consistent with the Operational Limitations, applicable Governmental Rules and the Facility's air permit and other environmental permits.

7.2 Automatic Generation Control.

Seller represents that the Facility is capable of receiving and responding to AGC commands via a digital, serial interface. Buyer, at its expense, shall have the right to furnish and install such communication equipment at the Facility as is necessary to receive Buyer's AGC commands. Seller shall provide Buyer and/or Buyer's agents access to Facility to install such equipment up to three (3) months prior to the Delivery Term. Buyer shall have the right to operate the Facility via remote AGC.

7.3 Availability Notice.

During the Delivery Term, Seller shall provide Buyer a notice regarding the availability of the Facility immediately after discovering that the Facility is unable to deliver all or part of the Energy and/or Ancillary Services whether due to a Forced Derate, Forced Outage, a Seller Force Majeure Event or a Planned Maintenance Outage (an "Availability Notice"). Seller shall notify Buyer of (i) the cause (or if not known, Seller's best estimate), (ii) the proposed action required to resume operation and (iii) Seller's best estimate of the expected duration. The content and method of transmitting such Availability Notice shall be mutually agreed to by the Parties. Seller also shall provide Buyer an Availability Notice when the Forced Derate, Forced Outage, Seller Force Majeure Event or Planned Maintenance Outage has ended. For purposes of calculating the Actual Equivalent Availability of the Facility, any period of Forced Derate or Forced Outage will be treated as ending at the end of the hour in which Seller notifies Buyer it is able to resume deliveries of Energy and/or Ancillary Services from the Facility.

7.4 Dispatch Notice.

(1) During the Delivery Term, Buyer shall provide Seller a preliminary weekly dispatch schedule, in writing, by Friday noon of each week for the upcoming week. The schedule shall include Buyer's good faith estimate of the amounts of Energy and Ancillary Services to be scheduled by Buyer each Day of the upcoming week.

(2) Buyer shall also provide Seller a notice for each Day it wishes to dispatch the Facility by no later than 9:00 a.m. EPT of the Business Day prior to the Day to which the notice shall relate (a "Dispatch Notice"). The content and method of transmitting such Dispatch Notice shall be mutually agreed to by the Parties. A Dispatch Notice shall be effective until either the delivery of a subsequent Dispatch Notice or until Buyer notifies Seller of a change in the dispatch of the Facility.

(3) Subject to the Operational Limitations, Buyer may modify a currently effective dispatch schedule. Modifications may include, but are not limited to, extending or shortening of dispatch hours and increasing or decreasing of load levels. Schedule changes shall be communicated to Seller by Buyer, with no less notice than the minimum time needed to attain the new load, based on the maximum ramp rate of the Unit(s) in service, prior to the time the new load level is required to be dispatched.

(4) To cancel a dispatch schedule and avoid a Start Charge, Buyer must notify Seller of such cancellation prior to the Facility operator initiating the start sequence. If Buyer fails to provide a Dispatch Notice to Seller to cancel dispatch of the Facility before the Facility operator initiates the start sequence, Buyer will be responsible for the Start Fee for the applicable Unit(s) and such start shall count as a Successful Start for the purpose of the Operational Limitations.

(5) By 11:00 a.m. EPT of the Business Day prior to the Day to which the notice relates, Buyer will notify Seller of Buyer's anticipated deliveries of Fuel Oil to the Fuel Oil Delivery Point.

7.5 Implementation of Scheduling Changes.

The Parties shall cooperate to ensure that all changes in the dispatch schedule are properly, appropriately and promptly (considering the particular circumstances involved) communicated to all entities requiring notification of any increase or decrease in the scheduled dispatch of the Facility. The Parties shall be further obligated to coordinate their scheduling activities and notices to one another to allow each Party sufficient time to meet deadlines and requirements of any Transmission Provider(s) and Gas transportation providers to assist the other Party in minimizing and/or eliminating Generator Imbalance Fees and Gas Imbalance Charges that may be associated with such deadlines and requirements.

7.6 Generator Imbalance Fees.

(1) Buyer acknowledges that its purchase of Energy and/or Ancillary Services are on a unit-contingent basis, and the actual amounts of Energy and/or Ancillary Services delivered in any hour depend on the mechanical and climatic conditions prevailing at the Facility at the time of production, among other factors. Buyer further acknowledges that the Transmission Provider will assess Generator Imbalance Fees when the quantity of Energy and/or Ancillary Services delivered from the Facility deviates from the quantity of Energy and/or Ancillary Services scheduled by Buyer with the Transmission Provider. Subject to the terms of this Agreement and consistent with Prudent Industry Practices and the Operational Limitations, Seller agrees to operate the Facility to promptly comply with the dispatch by Buyer and endeavor to minimize such Generator Imbalance Fees.

(2) Seller shall be responsible for Generator Imbalance Fees caused by (i) a Forced Derate, (ii) a Forced Outage, (iii) a Force Majeure Event claimed by Seller, (iv) Seller's failure to comply with Buyer's dispatch schedule for reasons other than climatic conditions at the time of any such failure, (v) Seller's failure to comply with the Operational Limitations and/or (vi) Seller's failure to comply with dispatch instructions from the Transmission Provider. Although Seller is responsible for Generator Imbalance Fees caused by a Forced Derate, a Forced Outage or a Force Majeure Event claimed by Seller, such responsibility shall end at the beginning of the first hour following the hour in which the Buyer submits a schedule change to the Transmission Provider. If Buyer fails to submit a schedule change to the Transmission Provider at the first opportunity following Buyer's receipt of an Availability Notice (whether oral or written) from Seller, Seller's responsibility for Generator Imbalance Fees shall nevertheless end at the time

such schedule change could have become effective if it had been promptly submitted to the Transmission Provider pursuant to the Transmission Provider's tariff and/or Protocols.

(3) Buyer shall be responsible for Generator Imbalance Fees other than the Generator Imbalance Fees for which Seller is responsible pursuant to Section 7.6(2). In addition, Buyer shall be solely responsible for Generator Imbalance Fees at any time Buyer requests that the Facility operate on AGC.

8. FUEL

8.1 Fuel and Fuel Metering.

(1) Fuel. During the Delivery Term, Buyer, at its sole cost and expense, shall arrange, nominate, balance, transport and deliver to the Fuel Delivery Point such quantities of Fuel as are required by Seller to generate at the Facility the quantity of Energy and/or Ancillary Services scheduled by Buyer including, without limitation, Fuel required for start up and shut down of the Units.

(2) Gas Delivery Point Operator Account. Prior to the commencement of the Delivery Term, Seller agrees to transfer the Gas Delivery Point from Seller's Delivery Point Operator Account to Buyer's Delivery Point Operator Account in accordance with the Gas Transporter's tariff, Delivery Point Operator Account Authorization Form and Operational Data Request Form.

(3) Gas Metering. Gas delivered by Buyer to the Facility shall be measured by the Gas Meter at the Gas Delivery Point. The Gas Transporter shall own, operate, maintain and test the Gas Meter. Seller shall coordinate with the Gas Transporter and Buyer with respect to maintenance and testing of the Gas Meter consistent with the Gas Interconnection Agreement and Prudent Industry Practice. The Gas Meter, located at the Facility, will measure the Gas consumed by the entire Facility rather than individual Units.

(4) Fuel Oil Delivery Measurement. The quantity of Fuel Oil in net gallons delivered by transport truck will be determined by supplier's Florida State certified truck rack meter readings upon loading. Each transport truck driver will provide Seller's personnel with a bill of lading verifying the date, Fuel type (i.e. low sulfur diesel or low sulfur #2) and the net gallons loaded. An original copy of such bill of lading will be promptly delivered to Buyer to facilitate payment for such Fuel Oil. Seller's personnel will verify (by observing sight glasses on the transport truck) that each truck was full upon delivery and empty after completion of delivery.

8.2 Gas Interconnection Agreement.

Seller has entered into the Gas Interconnection Agreement with the Gas Transporter and shall maintain such Gas Interconnection Agreement in full force and effect throughout the Delivery Term.

8.3 Transportation Service.

Buyer shall arrange and pay for all transportation service required to deliver the Fuel to the Fuel Delivery Point. Seller shall arrange and pay for all transportation service required to deliver the Fuel from the Fuel Delivery Point to the Facility.

8.4 Gas Specifications.

(1) All Gas tendered by Buyer for delivery to the Gas Delivery Point shall meet the then current natural gas quality specifications as set forth in the Gas Transporter's FERC tariff, as such specifications may change from time to time.

(2) If Gas tendered for delivery under this Agreement at the Gas Delivery Point materially fails for any reason to conform to the applicable specification set forth in Section 8.4(1), Seller will consider whether it is able to accept such non-conforming Gas and may refuse to take possession of all or any part of such Gas, giving Buyer the reasons for such refusal as soon as practicable.

(3) Buyer, as soon as it becomes aware of any delivery of Gas that materially fails to conform to any applicable specification for Gas set forth in Section 8.4(1), which deviation was not pre-approved by Seller, shall immediately cease further non-compliant deliveries and inform Seller of the cause and nature of such failure. If, and only if, Seller approves in writing the continued delivery of the non-conforming Gas on a temporary basis, Buyer may recommence deliveries of such non-conforming Gas, and shall immediately provide Seller its best estimate of the probable duration and quantity of the non-conforming Gas deliveries, and as soon as possible thereafter, shall recommence delivery of Gas conforming to Section 8.4(1). If the Facility is damaged as a direct result of the delivery of non-conforming Gas, Seller shall be entitled to the same remedies available to Buyer pursuant to the terms of the applicable Gas transportation agreements. Seller shall use commercially reasonable efforts to mitigate any damages resulting from the delivery of any non-conforming Gas at the Gas Delivery Point.

(4) Any failure by Buyer to deliver Gas meeting the specifications for Gas set forth in Section 8.4(1) to the Gas Delivery Point when needed to operate the Facility as scheduled by Buyer shall excuse Seller from its obligation to deliver scheduled Energy and/or Ancillary Services to Buyer except that Seller shall not be excused of this obligation for the period that Seller accepts the delivery of non-conforming Gas under Section 8.4(3). The unavailability of the Facility due to Buyer's delivery of non-conforming Gas that was not approved by the Seller shall not be considered a Forced Derate or Forced Outage, and the Facility shall be considered available for the purpose of calculating the Actual Equivalent Availability.

8.5 Fuel Oil Specifications.

(1) Fuel Oil supplied by Buyer to the Fuel Oil Delivery Point shall be of a quality meeting or better than the specifications for Fuel Oil set forth in Exhibit J. Seller and Buyer shall

notify each other of any material failure of Fuel Oil to comply with such specifications as soon as either Party becomes aware of such failure.

(2) Seller shall be responsible for routine tests performed prior to transferring Fuel Oil between storage tanks and prior to burning Fuel Oil.

(3) If Fuel Oil tendered for delivery under this Agreement to the Fuel Oil Delivery Point fails for any reason to materially conform to the Fuel Oil specifications set forth in Exhibit J, Seller may refuse all or any part of such Fuel Oil, giving Buyer the reasons for such refusal as soon as practical, and Buyer shall promptly (i) arrange at no cost to Seller for the removal of any such non-compliant Fuel Oil from or in the Fuel Oil storage tanks or (ii) blend any non-conforming Fuel Oil to meet the specifications set forth in Exhibit J. All costs associated with blending shall be for Buyer's account only, and Seller shall not be responsible for any such costs.

8.6 Title, Risk of Loss and Indemnity.

(1) As between the Parties, Buyer shall be deemed to be in exclusive possession and control (and responsible for any damages or injury caused thereby) of the Fuel prior to the Fuel Delivery Point, and Seller shall be deemed to be in exclusive possession and control (and responsible for any damages or injury caused thereby) of the Fuel at and from the Fuel Delivery Point. Notwithstanding delivery to the Fuel Delivery Point, title to the Fuel shall remain with Buyer or Buyer's third party supplier. Each of Seller and Buyer shall and hereby does indemnify, defend and hold harmless the other Party from any Claims arising from any act, failure to act or incident related to Fuel occurring when the indemnifying Party is in possession of such Fuel.

(2) Buyer warrants that the Fuel delivered by Buyer shall be free and clear of all liens, Claims and encumbrances arising prior to the Fuel Delivery Point.

8.7 Gas Imbalance Charges.

Buyer shall be responsible for all Gas Imbalance Charges associated with Gas deliveries under this Agreement to the extent such charges are caused by Buyer's actions or inactions. Seller shall be responsible for all Gas Imbalance Charges associated with Gas deliveries under this Agreement to the extent such charges are caused by Seller's actions or inactions. Both Parties shall use commercially reasonable efforts to avoid imbalances and to correct any imbalances which may occur.

8.8 Fuel Oil Inventory.

(1) An Independent Petroleum Inspector will measure the Initial Fuel Oil Inventory and the Final Fuel Oil Inventory, as adjusted for ambient conditions at the Facility and corrected to sixty (60) degrees Fahrenheit and sixty percent (60%) relative humidity, and report same to both Buyer and Seller. The Independent Petroleum Inspector will also sample the Seller's storage tank(s) and analyze the Fuel Oil to assure compliance with the specifications set forth in

Exhibit J. The Independent Petroleum Inspector will be selected by mutual agreement between Buyer and Seller and the cost will be equally shared between Buyer and Seller.

(2) At the beginning of the Delivery Term, Seller will sell and transfer title to the Initial Fuel Oil Inventory to Buyer. At the end of the Delivery Term, Buyer will sell and transfer title to the Final Fuel Oil Inventory to Seller. The sale price from Seller to Buyer and from Buyer to Seller will be the Initial Fuel Oil Inventory or Final Fuel Oil Inventory, as applicable, in net gallons multiplied by the cost per gallon determined by the average of the low and high daily prices averaged over the Days published in the calendar month of the respective sale and transfer dates for low sulfur diesel (.05% Sulfur) Gulf Coast pipeline as published in Platts U.S. Markets plus ten cents per gallon (to account for delivery charges and taxes). If the Platts U.S. Markets price described herein is not published, then the Parties shall mutually agree on a substitute index to represent the Gulf Coast market price for the Fuel Oil. Payment shall be due within ten (10) Business Days after the date the transfer is made by Seller and Buyer, as applicable. Buyer will make commercially reasonable efforts to provide Seller with a Final Fuel Oil Inventory approximately equal to the Initial Fuel Oil Inventory. Seller will provide Buyer with an estimate of the Initial Fuel Oil Inventory at least fifteen (15) Days prior to the start of the Delivery Term.

9. CHARGES

9.1 Monthly Charges.

For each full or partial month during the Delivery Term, Buyer shall pay to Seller the Capacity Charge, VOM Charge, and Start Charge, to the extent applicable. The charges established under this Agreement compensate Seller for all costs related to Station Load for the Facility, and no such costs shall be charged to Buyer.

9.2 Capacity Charge.

(1) Capacity Charge. In consideration for the right of Buyer to "toll" the Facility, in conformance with the terms and conditions of this Agreement, Buyer shall pay to Seller for each month during the Delivery Term a Capacity Charge equal to (i) the Monthly Demonstrated Capacity multiplied by (ii) the applicable Capacity Price for such month, *provided, however*, if the first or last month of the Delivery Term is a partial month, the Capacity Charge shall be pro-rated based upon the number of Days in such partial month falling within the Delivery Term compared to the total number of Days in such month. The Capacity Charge shall be payable each month throughout the Delivery Term whether or not Buyer actually schedules deliveries of Energy or Ancillary Services. The Monthly Demonstrated Capacity may change as a result of the performance tests or optional re-tests of the Facility's generating capability. Upon any valid performance test or optional retest of the Facility, the Monthly Demonstrated Capacity established by such test shall be used to calculate the Capacity Charge until the date of the next valid test.

(2) Payment of Capacity Charge during a Force Majeure Event. If Seller claims a Force Majeure Event and the Available Capacity of the Facility is not equal to zero (0), such

Force Majeure Event shall be deemed to be a Forced Derate for the purpose of calculating the Actual Equivalent Availability of the Facility and Buyer shall be entitled to an Availability Rebate as described in Section 9.2(3) below. If Seller claims a Force Majeure Event and the Available Capacity of the Facility is zero (0) as a result, Buyer shall be relieved of the obligation to pay Seller the portion of the Capacity Charge associated with the period of the Force Majeure Event. The remedy provided to Buyer in the preceding sentence is in lieu of the Availability Rebate described in Sections 6.3 and 9.2(3). If Buyer claims a Force Majeure Event for any reason, Buyer shall not be relieved of the obligation to pay Seller the Capacity Charge.

(3) Rebate of Capacity Charge for Actual Equivalent Availability. On a monthly basis, Seller shall calculate a rebate to the Capacity Charge, if any, resulting from any variation between the Actual Equivalent Availability of the Facility for a month and the applicable Guaranteed Availability of the Facility for such month in accordance with the formula set forth in Exhibit E (the "Availability Rebate"). The Availability Rebate, if any, payable by Seller for a month shall be netted against the Capacity Charge payable by Buyer for such month.

9.3 VOM Charge.

Buyer shall pay to Seller for each month during the Delivery Term a VOM Charge, as set forth in Exhibit B, equal to the sum of (i) the VOM Price applicable while the Facility is operating on Gas multiplied by the total quantity of Energy and/or Ancillary Services delivered to the Delivery Point during a month while the Facility is operating on Gas and (ii) the VOM Price applicable while the Facility is operating on Fuel Oil multiplied by the total quantity of Energy and/or Ancillary Services delivered to the Delivery Point during a month while the Facility is operating on Fuel Oil.

9.4 Start Charge.

For each month during the Delivery Term, Buyer shall pay to Seller a Start Charge equal to (i) the total number of Successful Starts per Unit during such month multiplied by (ii) the Start Fee for the applicable Unit. Buyer shall only pay one Start Fee for each Successful Start scheduled by Buyer. Buyer shall not be obligated to pay a Start Fee for a restart of any Unit which experiences a Forced Outage during a currently effective Dispatch Notice if the Forced Outage ends and the Unit is started during such currently effective Dispatch Notice. If the currently effective Dispatch Notice has expired, Seller shall refer to the preliminary weekly dispatch schedule provided by Buyer pursuant to Section 7.4(1) to determine whether the Facility would have been scheduled to operate at the time the Forced Outage ends. If the preliminary weekly dispatch schedule reflects that the Facility would have been scheduled to operate at the time the Forced Outage ends, Seller shall waive the Start Fee for the applicable Unit(s) in the event Buyer submits a Dispatch Notice which is consistent with the preliminary schedule.

10. REPRESENTATIONS AND WARRANTIES

10.1 Representations and Warranties.

(1) As a material inducement to entering into this Agreement, each Party with respect to itself, hereby represents and warrants to the other Party as of the Agreement Date and throughout the Contract Term as follows:

(a) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation and is qualified to conduct its business in those jurisdictions necessary for it to perform its obligations under this Agreement;

(b) it has all authorizations from any Governmental Authority necessary for it to legally perform its obligations under this Agreement or will obtain such authorizations in a timely manner prior to when any performance by it requiring such authorization becomes due;

(c) the execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of the terms or conditions in its governing documents or any contract to which it is a party or any Governmental Rule applicable to it;

(d) this Agreement constitutes a legal, valid and binding obligation of such Party enforceable against it in accordance with its terms, and each Party has all rights such that it can and will perform its obligations to the other Party in conformance with the terms and conditions of this Agreement, subject to bankruptcy, insolvency, reorganization and other laws affecting creditor's rights generally and general principles of equity;

(e) except as provided in Section 11.1(2), no Bankruptcy is pending against it or to its knowledge threatened against it; and

(f) the audited financial statements provided by Seller and Buyer pursuant to Section 12.3(2) are true and accurate based on the respective Party's knowledge, information and belief;

(g) it has negotiated and entered into this Agreement in the ordinary course of its respective business, in good faith, for fair consideration and on an arm's length basis.

(2) Buyer hereby represents and warrants that Buyer will use the Monthly Demonstrated Capacity, Energy and Ancillary Services of the Facility, purchased under this Agreement, exclusively for resale to Buyer's retail customers and/or wholesale customers.

(3) Seller hereby represents and warrants that the terms and conditions of this Agreement are fair and reasonable and reflect its exercise of prudent business judgment consistent with its fiduciary duties as a debtor-in-possession and are supported by fair consideration and reasonably equivalent value in money or money's worth.

(4) Each of Buyer and Seller represent and warrant to the other that it is a "forward contract merchant" within the meaning of the United States Bankruptcy Code.

10.2 No Other Representations and Warranties.

Each Party acknowledges that it has entered into this Agreement based solely upon the express representations and warranties set forth in this Agreement.

11. EVENT OF DEFAULT AND REMEDIES

11.1 Event of Default.

(1) An "Event of Default" shall mean with respect to a Party (the "Defaulting Party") any of the actions set forth below in this Section 11.1(1):

(a) the failure of the Defaulting Party to make, when due, any payment required under this Agreement if such failure is not remedied within five (5) Business Days after written notice of such failure is given to the Defaulting Party by the other Party (the "Non-Defaulting Party");

(b) except as permitted by Section 5.4, Seller sold Monthly Demonstrated Capacity, Energy and/or Ancillary Services from the Facility to a third party during the Delivery Term;

(c) any representation or warranty (including, but not limited to, the representation and warranty set forth in Section 10.1(1)(f)) made by the Defaulting Party in this Agreement shall prove to have been false or misleading in any material respect when made; provided that if such representation or warranty is capable of being corrected, no Event of Default shall have occurred if the Defaulting Party is diligently pursuing such correction and such representation or warranty is corrected within thirty (30) Days from the date upon which the Non-Defaulting Party gives written notice to the Defaulting Party of the false and misleading nature of the representation or warranty;

(d) the failure by the Defaulting Party to perform any material covenant set forth in this Agreement (other than the events that are otherwise specifically covered in this Section 11.1(1) as a separate Event of Default and other than any covenant for which an exclusive remedy is set out elsewhere in this Agreement), and such failure is not excused by a Force Majeure Event or cured within thirty (30) Days after written notice thereof to the Defaulting Party or, if such failure

cannot reasonably be cured in such period and the Defaulting Party within such period commences, and thereafter proceeds with reasonable due diligence, to cure such failure, such period shall be extended for such further period as shall be necessary for the Party to cure such failure with reasonable due diligence, provided that the total cure period shall not exceed ninety (90) Days;

(e) except as provided in Section 11.1(2), the Bankruptcy of the Defaulting Party;

(f) the failure by the Defaulting Party to meet its obligation to provide Security as required by Section 19 if such failure is not remedied within one (1) Business Day after written notice of such failure is given to the Defaulting Party by the other Non-Defaulting Party; and

(g) the failure of the Defaulting Party to assign the Agreement in accordance with Section 16.

(2) Notwithstanding anything herein to the contrary, Buyer acknowledges that Seller filed a voluntary petition for relief under Chapter 11 of the United States Bankruptcy code on July 14, 2003 (the "Filing") and such case remains pending in the United States Bankruptcy Court, Northern District of Texas (the "Bankruptcy Court"). Until such time as Seller emerges from Chapter 11 Bankruptcy through the confirmation of a plan or reorganization, the Filing shall not constitute an Event of Default under Sections 11.1(c) and/or (e) of this Agreement; provided, however, that in the event (A) Seller files a motion which contemplates the sale of substantially all of its assets; (B) Seller files a Chapter 11 plan which contemplates the sale of substantially all of its assets; (C) Seller files a motion or request to convert its Chapter 11 case to a Chapter 7 proceeding; (D) the Bankruptcy Court enters an order converting Seller's case from a Chapter 11 proceeding to a Chapter 7 proceeding; or (E) the Bankruptcy Court enters an order appointing a trustee or examiner (with expanded powers) in Seller's bankruptcy case, any such event (A) through (E) shall constitute an Event of Default under Sections 11.1(b),(c) and/or (f) of this Agreement.

11.2 Remedies Upon an Event of Default.

(1) Upon the occurrence of an Event of Default and for so long as such Event of Default is continuing, the Non-Defaulting Party may, upon written notice to the Defaulting Party, establish a date, no earlier than the Day such notice is effective and no later than twenty (20) Days after such notice is effective, on which this Agreement will terminate ("Early Termination Date"). Moreover, the Non-Defaulting Party will have the right to exercise all rights and remedies available to it under this Agreement, at law, and in equity including, but not limited to, the right: (a) to suspend performance hereunder until the Event of Default has been cured, provided, however, in no event shall any such suspension continue for longer than ten (10) Business Days unless an Early Termination Date shall have been declared and notice thereof pursuant to this Section 11.2(1) given; (b) to retain, draw on, liquidate or apply any Security in accordance with the terms of this Agreement, including Section 19; (c) to require the Defaulting Party to pay damages as set forth in Section 11.2(2); (d) to file suit to compel the Defaulting

Party to perform or obtain damages from the Defaulting Party; and/or (e) to file suit to enjoin any acts that are unlawful or violate the rights of the Non-Defaulting Party under this Agreement.

(2) Except as otherwise expressly provided herein, any Event of Default shall subject the Defaulting Party to the payment only of actual direct damages to the Non-Defaulting Party. Subject to the terms of this Agreement, the Non-Defaulting Party shall be entitled to take any actions as may be necessary or appropriate to protect, preserve or enforce its rights or to reduce any risk of loss resulting from an early termination of this Agreement. The Non-Defaulting Party shall calculate a Settlement Amount, if any, resulting from an Early Termination Date in a commercially reasonably manner. The Settlement Amount is intended to compensate the Non-Defaulting Party for the loss of bargain and the loss of protection against risks arising from the early termination of this Agreement. Upon determination of the Settlement Amount by the Non-Defaulting Party, the Non-Defaulting Party shall provide the Defaulting Party with a written statement showing the calculation of the Settlement Amount in sufficient detail to allow the Defaulting Party to compare such amount to its own estimate of the Settlement Amount. In the event the Defaulting Party disputes the Non-Defaulting Party's calculation of the Settlement Amount, the dispute shall be resolved pursuant to the terms of Article 21. Nothing in this Section 11.2(2) shall be construed to restrict or preclude the Non-Defaulting Party from realizing on any Security held by the Non-Defaulting Party at any time upon the occurrence of an Event of Default with respect to the Defaulting Party notwithstanding (and without awaiting the outcome of) any dispute as to the Settlement Amount payable. Consistent with Section 24.1, the Parties have an obligation to mitigate damages in an Event of Default in order to minimize the Settlement Amount.

(3) Any assertion by the Non-Defaulting Party of its entitlement to enforce any of the remedies described in Section 11.2(1) must be initiated by the Non-Defaulting Party, through written notice to the Defaulting Party, no later than the expiration of twelve (12) months after the termination of this Agreement. The Party who fails to act in a timely manner as provided in this Section 11.2 shall be deemed to have waived its right to enforce such remedies.

12. BILLING AND PAYMENT

12.1 Billing and Payment.

Following each month during the Delivery Term, Seller shall render to Buyer (by regular mail, facsimile or other acceptable means pursuant to Section 18) a statement setting forth the Capacity Charge, VOM Charge, and Start Charge, to the extent applicable, for such month and any other amounts due to either Party. On or before the later of (i) ten (10) Days after receipt of Seller's statement or (ii) the twentieth (20th) Day of the month in which such statement is received or if such Day is not a Business Day, the immediately following Business Day, Buyer shall render, by wire transfer, the amount set forth on such statement to the payment address provided in Exhibit H hereto. Overdue payments shall accrue interest from the due date to the date of payment at the Interest Rate. Any disputed invoiced amounts, except amounts which are manifestly inaccurate or are not reasonably supported by documentation, shall be paid in full on the applicable payment due date, subject to later return together with interest accrued at the

Interest Rate until the date paid. Inadvertent overpayments shall be returned by Seller upon request or deducted by Seller from subsequent payments.

12.2 Netting.

If Buyer and Seller are each required to pay an amount under this Agreement in the same month, then such amounts with respect to each Party may be aggregated and the Parties may discharge their obligations to pay through netting, in which case the Party, if any, owing the greater aggregate amount may pay to the other Party the difference between the amounts owed. Such netting shall not result in any waiver of, and each Party reserves to itself, any rights, counterclaims, remedies or defenses (to the extent not expressly herein waived or denied) which such Party has or may be entitled to arising from or out of this Agreement.

12.3 Audit and Financial Information.

(1) Each Party (and its representatives) has the right, on five (5) Business Days prior written notice, at its sole expense and during normal working hours, to examine the records of the other Party to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant to this Agreement. If requested, Seller shall provide to Buyer statements evidencing the quantities of Energy and/or Ancillary Services delivered at the Delivery Point, metering records of Fuel delivered to the Fuel Delivery Point and/or Fuel consumed at the Facility and any tests or records of any non-conforming Gas delivered at the Gas Delivery Point. If any such examination reveals any inaccuracy in any statement, the necessary adjustments in such statement and the payments thereof will be promptly made and shall bear interest calculated at the Interest Rate from the date the overpayment or underpayment was made until such adjustment is paid or refunded; *provided, however*, that no adjustment for any statement or payment will be made unless objection to the accuracy thereof was made prior to the lapse of twenty-four (24) months from the receipt thereof.

(2) If requested by a Party ("Party A"), the other Party or its guarantor, if any, ("Party B") shall deliver (i) within 120 Days following the end of each fiscal year, a copy of Party B's annual report containing audited consolidated financial statements for such fiscal year and (ii) within 60 Days after the end of each of its first three fiscal quarters of each fiscal year, a copy of Party B's quarterly report containing unaudited consolidated financial statements for such fiscal quarter. In all cases the statements shall be for the most recent accounting period and prepared in accordance with GAAP; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default under Section 11.1 so long as Party B diligently pursues the preparation, certification and delivery of the statements. If Party B's financial statements are publicly available from the website of the Securities and Exchange Commission, Party B shall not be required to deliver copies of such statements to Party A. Notwithstanding this Section 12.3(2), with respect to Seller, all financial statements shall be for Mirant Corporation.

13. INDEMNIFICATION

13.1 Indemnification by Seller.

(1) Seller shall indemnify, defend and hold harmless Buyer and Buyer's officers, directors, agents and employees from and against any and all Claims, demands, liabilities (including reasonable attorney's fees), judgments, fines, settlements and other amounts (collectively, "Damages") arising from any and all Claims relating to or arising out of the negligence or intentional misconduct of Seller.

(2) Except to the extent caused by the acts or failures to act of Buyer in breach of this Agreement and except to the extent Buyer is obligated to indemnify Seller for such Claims elsewhere under this Agreement, Seller shall indemnify, defend and hold harmless Buyer and Buyer's officers, directors, agents and employees, from and against all Claims for (i) personal injury, (ii) property damage, and/or (iii) Claims related to environmental laws or regulations, which arise from Seller's ownership or operation of the Facility or Seller's handling, treatment, storage and disposal of hazardous waste at the Facility including, but not limited to, Title 40, Code of Federal Regulations and Chapter 17, Florida Administrative Code.

13.2 Indemnification by Buyer.

(1) Buyer shall indemnify, defend and hold harmless Seller and Seller's officers, directors, agents and employees from and against any and all Damages, as defined in Section 13.1(1), arising from any and all Claims relating to or arising out of (i) the negligence or intentional misconduct of Buyer and/or (ii) Buyer's actions or omissions taken or made in connection with Buyer's operation of the Facility pursuant to Section 4.8.

(2) Except to the extent caused by the acts or failures to act of Seller in breach of this Agreement and except to the extent Seller is obligated to indemnify Buyer for such claims elsewhere under this Agreement, Buyer shall indemnify, defend and hold harmless Seller and Seller's officers, directors, agents and employees from and against all Claims for (i) personal injury, (ii) property damage, and/or (iii) Claims related to environmental laws or regulations, which arise from Buyer's operation of the Facility pursuant to Section 4.8 or Buyer's handling, treatment, storage and disposal of hazardous waste during Buyer's operation of the Facility including, but not limited to, Title 40, Code of Federal Regulations and Chapter 17, Florida Administrative Code. For purposes of clarity, in the event Buyer exercises its right pursuant to Section 4.8(1) to operate the Facility, any act or failure to act by Seller in breach of this Agreement, which led to Buyer's operation of the Facility, shall not be used to excuse Buyer's indemnification obligations hereunder.

13.3 Settlement of Claims.

No Claims relating to or arising out of the alleged negligence or intentional misconduct of the indemnifying Party may be settled by such Party without the prior written consent of the indemnified Party, which consent shall not be unreasonably withheld or delayed. With respect to

this Section 13.3, "unreasonably withheld or delayed" shall not include the indemnified Party's withholding or delay of consent to any settlement in which there is admission of guilt or wrongdoing by the indemnified Party or, in the absence of such admission, when the Parties have been unable to agree on the amount of Damages due to the indemnified Party as a result of the applicable Claim.

14. LIMITATION OF LIABILITY

THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS HEREIN PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY HEREIN PROVIDED, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST OPPORTUNITY COSTS OR LOST PROFITS, BY STATUTE, IN TORT OR CONTRACT, AT LAW OR IN EQUITY, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES IS WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING, WITHOUT LIMITATION, THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE IS SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS. THE PROVISIONS OF THIS SECTION 14 SHALL NOT LIMIT IN ANY WAY EITHER PARTY'S RIGHT TO EXERCISE THE REMEDIES SET FORTH IN ARTICLE 17 OF THIS AGREEMENT, OR TO RECOVER THE AMOUNTS PAYABLE PURSUANT TO ARTICLE 17.

15. TAXES

15.1 General.

Buyer and Seller shall each use reasonable efforts to minimize taxes applicable to the transactions to be carried out under the terms of this Agreement. Either Party, upon written request of the other, shall provide a certificate of exemption or other reasonably satisfactory evidence of exemption if such Party is exempt from taxes, and shall use reasonable efforts to obtain and cooperate with obtaining any exemption from or reduction of tax.

15.2 Applicable Taxes.

(1) Seller shall be responsible for all existing and any new sale, use, transportation, excise, business and operation, *ad valorem*, or other similar tax, imposed or levied by any Governmental Authority relating to the ownership of the Facility or operation of the Facility. Notwithstanding the foregoing, if this Agreement is deemed by any Governmental Authority to be a taxable "license to use real property," Seller shall not be responsible for any existing or new sale, use or similar tax levied thereon. Seller shall not be responsible for any existing or new sale, use, transportation, excise, *ad valorem*, or similar tax imposed or levied on the sale, use or consumption of Fuel.

(2) Buyer shall be responsible for all existing and any new sale, use, transportation, excise, *ad valorem*, or other similar tax imposed or levied by any Governmental Authority relating to the sale, use or consumption of Fuel and relating to the Monthly Demonstrated Capacity, Energy and/or Ancillary Services at and after its receipt by Buyer at the Delivery Point. If this Agreement is deemed by any Governmental Authority to be a taxable "license to use real property," Buyer shall be responsible for any existing or new sale, use or similar tax levied thereon.

(3) If Seller is required to collect or remit any tax on behalf of Buyer as a result of the transactions contemplated in this Agreement (including any sales, use, utility or gross receipts tax, or any tax of a similar nature), Buyer shall reimburse that tax to Seller, with such reimbursement to be made on an after tax basis. Neither Party is required to pay, or cause to be paid, any taxes measured by the income of the other Party.

(4) Each Party shall indemnify, release, defend and hold harmless the other Party from and against any and all liability for (i) taxes measured by the income of the indemnifying Party and (ii) taxes imposed or assessed by any Governmental Authority with respect to the transactions contemplated in this Agreement that are the responsibility of such Party pursuant to this Section 15.2.

16. ASSIGNMENT; BINDING EFFECT

16.1 Assignment.

Neither Party shall assign this Agreement or any of its rights or obligations hereunder without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed, and any such assignee shall agree in writing to be bound by the terms and conditions hereof and shall meet the non-assigning Party's creditworthiness criteria which shall include, but shall not be limited to, providing adequate assurance to the non-assigning Party in an amount and form determined by the non-assigning Party in a commercially reasonable manner. The Parties acknowledge that the form and amount of any adequate assurance which the non-assigning Party may require from an assignee, as described in the preceding sentence, may not be the same as the form and amount of Security which Seller or Buyer, as applicable, is required to provide pursuant to Sections 19.1 or 19.2. Notwithstanding the foregoing, either Party may,

without the need for consent from the other Party, (a) transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof in connection with any financing or other financial arrangements; (b) transfer or assign this Agreement to an Affiliate of such Party; or (c) transfer or assign this Agreement to any Person succeeding to all or substantially all of the assets of such Party; provided, that in the case of clauses (b) and (c) any such assignee shall agree in writing to be bound by the terms and conditions hereof and shall (i) meet the non-assigning Party's creditworthiness criteria which shall include, but shall not be limited to, providing adequate assurance to the non-assigning Party in an amount and form determined by the non-assigning Party in a commercially reasonable manner and (ii) demonstrate to the non-assigning Party that it has internal and/or external resources with reasonable proficiency in generation operations and that it is able to operate the Facility consistent with Prudent Industry Practice and in accordance with all the obligations under this Agreement. Upon any assignment consented to by the other Party or permitted under clauses (b) or (c) of the preceding sentence, the assigning Party shall be relieved of liability for all obligations arising hereunder after the date such assignment becomes effective. The Parties agree that it shall be a condition precedent to any proposed assignment of this Agreement that the assignor and assignee shall fulfill the obligations of this Section 16.1 before the assignment of this Agreement shall be allowed to occur.

16.2 Binding Effect.

This Agreement shall inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns.

17. CONFIDENTIALITY

Each Party shall keep confidential, and shall not disseminate to any third party (other than such Party's Affiliates) or use for any other purpose (except with written authorization), any information received from the other that is confidential or proprietary, including this Agreement, unless legally compelled (by deposition, inquiry, request for production of documents, subpoena, civil investigative demand or similar process, or by order of a court or tribunal of competent jurisdiction, or in order to comply with applicable rules or requirements of any stock exchange, government department or agency or other Governmental Authority, or by requirements of any securities law or regulation or other Governmental Rule) or as necessary to enforce the terms of this Agreement. Either Party may disclose the terms of this Agreement to (i) its Affiliates, and to its and their officers, directors, employees, attorneys and accountants, and (ii) its lenders, prospective lenders, financing participants and their respective consultants and agents who (in the case of Persons identified in clause (ii)) are bound to hold, treat and protect such information on a confidential basis. If any Party is compelled to disclose any confidential information of the other Party, such Party shall request that such disclosure be protected and maintained in confidence to the extent reasonable under the circumstances and use reasonable efforts to protect or limit disclosure with respect to commercially sensitive terms. In addition, such Party shall provide the other Party with prompt notice of the requirement to disclose confidential information in order to enable the other Party to seek an appropriate protective order or other remedy, and such Party shall consult with the other Party with respect to the other Party taking steps to resist or narrow the scope of any required disclosure.

18. NOTICES

All notices, requests, statements or payments shall be made to the addresses and persons specified in Exhibit H hereto. All notices or requests shall be made in writing except where this Agreement expressly provides that notice may be made orally. Notices required to be in writing shall be delivered by letter, facsimile or other documentary form. Notice by facsimile shall be deemed to have been received on the Day on which it was transmitted (where confirmation of successful transmission is received) (unless transmitted after 5:00 p.m. at the place of receipt or on a Day that is not a Business Day in which case it shall be deemed received on the next Business Day); provided that dispatch notifications and notifications of changes in availability of the Facility sent by facsimile shall be treated as received when confirmation of successful transmission is received. Notice by hand delivery, overnight mail, or courier shall be deemed to have been received when delivered. Notice by telephone shall be deemed to have been received at the time the call is received. A Party may change its address by providing notice of same in accordance herewith.

19. SECURITY

19.1 Security Provided by Buyer.

(1) Security Provided by Buyer. If, during the Contract Term, Buyer's Credit Rating falls below an Acceptable Credit Rating, then within five (5) Business Days, Buyer shall provide to Seller Security in a form chosen by Buyer. If the form is a Letter of Credit or cash, the amount of such Letter of Credit or cash shall equal six million dollars ($6,000,000). If the form is a Guaranty, the amount of the Guaranty shall equal twenty million dollars ($20,000,000). Buyer shall be required to maintain such Security throughout the Contract Term unless otherwise provided in Section 19.1(2) or Section 19.4.

(2) Buyer Guarantor Credit Downgrade. If Buyer has provided a Guaranty to Seller pursuant to Section 19.1(1) and Buyer's guarantor fails to maintain an Acceptable Credit Rating at any time during the Contract Term, Buyer shall be required to replace such Guaranty with a Letter of Credit or cash in the amount of six million dollars ($6,000,000). Upon Seller's receipt of the Letter of Credit or cash, Seller shall return the Guaranty to Buyer.

19.2 Security Provided by Seller.

(1) Security Provided by Seller. Within five (5) Business Days of the execution of this Agreement, Seller shall provide to Buyer Security in the amount of six million dollars ($6,000,000) which, at Seller's election, shall be in the form of either a Letter of Credit or cash. Seller shall be required to maintain such Security throughout the Contract Term unless otherwise provided in Section 19.2(2) or Section 19.4.

(2) Substitution of Security. If, during the Contract Term, Mirant Corporation has an Acceptable Credit Rating and thereby becomes an Acceptable Guarantor, Seller, upon written notice to Buyer, may substitute the Security provided in accordance with Section 19.2(1) with a

Guaranty from Mirant Corporation in an amount equal to twenty million dollars ($20,000,000). If Seller elects to provide such substitute Security, Buyer will return to Seller the Security that Seller previously provided to Buyer pursuant to Section 19.2(1).

(3) Seller Guarantor Credit Downgrade. If Seller has provided a Guaranty to Buyer pursuant to Section 19.2(2) and Mirant Corporation fails to maintain an Acceptable Credit Rating at any time during the Contract Term, Seller shall be required to provide a Letter of Credit or cash in the amount of six million dollars ($6,000,000) and the existing Guaranty shall be reduced to fourteen million dollars ($14,000,000). In lieu of reducing the amount of the existing Guaranty, Seller may choose to terminate the existing Guaranty and replace it with a new Guaranty from Mirant Corporation in the amount of fourteen million dollars ($14,000,000). The Parties acknowledge and agree that Seller shall not be required to provide a Guaranty from an entity other than Mirant Corporation notwithstanding any failure of Mirant Corporation to maintain an Acceptable Credit Rating and such Guaranty shall be deemed acceptable Security to Buyer.

19.3 Letter of Credit.

If (i) the Pledging Party is required to provide a Letter of Credit under Section 19, (ii) the Pledging Party fails to cause any Letter of Credit to be renewed or replaced at least twenty (20) days before its expiration and (iii) the Pledging Party has not provided substitute Security if permitted under Section 19, then the Secured Party shall have the right to draw all or any part of the available balance of such Letter of Credit. The Pledging Party's failure to renew the Letter of Credit shall not, in and of itself, result in an Event of Default under Section 11.1(f). The cash proceeds received by the Secured Party from drawing on a Letter of Credit under this provision shall be held as Security just as though the Pledging Party had originally posted cash to support its obligations under Section 19. In the event the bank issuing the Letter of Credit shall fail to honor the Secured Party's properly documented request to draw on the outstanding Letter of Credit and the Pledging Party shall fail to provide a replacement Letter of Credit or other form of Security as permitted herein, the occurrence of such event shall be deemed an Event of Default under Section 11.1(f).

19.4 Exercise of Rights Against Security.

In the event (i) an Event of Default with respect to the Pledging Party has occurred and is continuing, and/or (ii) an Early Termination Date has occurred or been designated as the result of an Event of Default with respect to the Pledging Party, then unless the Pledging Party has paid in full all of its obligations that are due to the Secured Party under this Agreement, the Secured Party may exercise one or more of the following rights and remedies:

(1) Letter of Credit. In the event that the Security posted by the Pledging Party is a Letter of Credit, the Secured Party may draw on the entire, undrawn portion of any outstanding Letter of Credit. Unless and until such amounts are applied to the Pledging Party's payment obligations hereunder, the cash proceeds received from drawing upon the Letter of Credit shall be deemed Security for the Pledging Party's obligations to the Secured Party and the Secured Party shall have the rights and remedies set forth in Section 19.3(b) with respect to such cash

proceeds. Notwithstanding the Secured Party's receipt of cash proceeds from a drawing under a Letter of Credit, the Pledging Party shall remain liable (i) for any failure to provide any additional Security as required by Section 19 or (ii) for any amounts owing to the Secured Party and remaining unpaid after the application of the amounts so drawn by the Secured Party.

(2) Cash. In the event that the Security posted by the Pledging Party is cash, the Secured Party shall have the right to apply such cash against and in satisfaction of any amount due and payable by the Pledging Party in respect of its obligations under this Agreement.

(3) Guaranty. In the event that the Security posted by the Pledging Party is a Guaranty, the Secured Party shall have the right to demand payment from the guarantor in accordance with the terms of the Guaranty.

19.5 Return of Security.

If the Pledging Party achieves an Acceptable Credit Rating at any time during the Contract Term, the Secured Party shall, upon request, return any Security posted by the Pledging Party, provided, however, the provisions of Sections 19.1 and 19.2 shall continue to apply to any subsequent failures to maintain an Acceptable Credit Rating. Following termination of this Agreement, the Secured Party shall return any Security posted by the Pledging Party within five (5) Business Days after the date on which the Pledging Party has paid the Secured Party all amounts owed to the Secured Party under this Agreement.

20. FORCE MAJEURE

Neither Party shall be in breach or liable for any delay or failure in its performance under this Agreement to the extent such performance is prevented or delayed due to a Force Majeure Event, provided that:

(1) the non-performing Party shall give the other Party written notice as soon as practical and within three (3) Business Days of the commencement of the Force Majeure Event, with details to be supplied within ten (10) Days after the commencement of the Force Majeure Event further describing the particulars of the occurrence;

(2) the delay in performance shall be of no greater scope and of no longer duration than is directly caused by the Force Majeure Event;

(3) the Party whose performance is delayed or prevented shall proceed with due diligence to overcome the events or circumstances preventing or delaying performance and shall provide written progress reports to the other Party during the period that performance is delayed or prevented describing actions taken and to be taken to remedy the consequences of the Force Majeure Event, the schedule for such actions and the expected date by which performance shall no longer be prevented or delayed by the Force Majeure Event; and

(4) when the performance of the Party claiming the Force Majeure Event is no longer being delayed or prevented, that Party shall give the other Party written notice to that effect.

21. DISPUTE RESOLUTION

In the event of any dispute arising out of or relating to this Agreement which the Parties are unable to settle within thirty (30) Days after the dispute arose, either Party may refer the dispute to a meeting of senior management, in which case each Party shall nominate a senior officer of its management to meet at a mutually agreed time and place not later than forty-five (45) Days after the dispute arose to attempt to resolve the dispute. Should a resolution not be reached within fifteen (15) Days after the meeting of senior officers, then either Party may pursue its rights at law or in equity with respect to such dispute. Unless directed otherwise by a court or a Governmental Authority or unless otherwise provided by the express terms of this Agreement, no Party shall cease or delay performance of its obligations under this Agreement during the existence of any dispute or the pendency of any proceeding to resolve it, and the Parties shall pay to each other all amounts owing under Section 12.1. Notwithstanding the foregoing, if either Party has the right to terminate this Agreement pursuant to Section 11.2, such Party shall not be obligated to comply with this Section 21 prior to or as a condition precedent to exercising its right to terminate the Agreement.

22. INSURANCE

Seller shall carry and maintain, or cause to be carried and maintained, no less than the insurance coverages listed in Exhibit I, applicable to all operations undertaken by Seller. Such minimum amounts may be satisfied either by primary insurance or by any combination of primary and excess/umbrella insurance. Except as provided in Exhibit I, the required insurance coverages shall be maintained in effect throughout the Contract Term.

23. MATERIAL CHANGE TO AIR PERMIT

If the air permit for the Facility, as originally issued, is amended such that the maximum number of Run Hours or the minimum load, as determined by environmental restrictions contained in the air permit, materially reduces the availability of the Facility, Seller shall provide Buyer with prompt written notice of such amendment, and Buyer shall have the right to terminate this Agreement by providing written notice to Seller within ninety (90) Days of Buyer's receipt of notice of any such amendment, with any such termination to be effective ninety (90) Days after delivery of such termination notice. Seller and Buyer shall not be liable for any damages resulting from an early termination of this Agreement pursuant to this Section 23. If the Facility's air permit is amended by any Governmental Authority, Seller shall promptly notify Buyer of any modifications to the Operational Limitations as may be necessary to comply with the amended air permit.

24. MISCELLANEOUS

24.1 Duty to Mitigate.

Each Party agrees that it has a duty to mitigate damages and covenants that it will use commercially reasonable efforts to minimize any damages it may incur as a result of the other Party's performance or non-performance of this Agreement.

24.2 Entire Agreement and Amendments.

This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof. There are no prior or contemporaneous agreements or representations affecting the subject matter of this Agreement other than those herein expressed. No amendment, modification or change to this Agreement shall be enforceable unless reduced to writing and executed by both Parties.

24.3 Governing Law.

This Agreement and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the State of Florida, without giving effect to principles of conflicts of laws that would require the application of the law of any other state. The Parties expressly waive the right to a jury trial for any dispute arising from this Agreement.

24.4 Waivers.

The failure of either Party hereto to enforce at any time any provision of this Agreement shall not be construed to be a waiver of such provision, nor in any way to affect the validity of this Agreement or any part hereof or the right of a Party thereafter to enforce each and every such provision. A waiver under this Agreement must be in writing and state that it is a waiver. No waiver of any breach of this Agreement shall be held to constitute a waiver of any other or subsequent breach.

24.5 Fines.

Except as otherwise provided in this Agreement, each Party shall be responsible for and shall pay the fines that are levied upon it by a Governmental Authority or regulatory body as a result of such Party's own actions or inactions except to the extent one Party is obligated to indemnify the other Party under this Agreement.

24.6 Severability.

Except as otherwise stated herein, any provision or section declared or rendered unlawful by a Governmental Authority, or deemed unlawful because of a statutory change, will not otherwise affect the lawful obligations that arise under this Agreement.

24.7 Headings; Exhibits.

The headings used for the sections and articles herein are for convenience and reference purposes only and shall in no way affect the meaning or interpretation of the provisions of this Agreement. Any and all Exhibits referred to in this Agreement are, by such reference, incorporated herein and made a part hereof for all purposes.

24.8 No Third Party Beneficiaries.

Nothing in this Agreement shall provide any benefit to any third party or entitle any third party to any claim, cause of action, remedy or right of any kind, it being the intent of the Parties that this Agreement shall not be construed as a third party beneficiary contract.

24.9 Counterparts.

This Agreement may be executed in several counterparts, each of which is an original and all of which constitute one and the same instrument.

24.10 No Partnership.

Nothing contained in this Agreement shall be construed to create a partnership, joint venture, agency or other relationship that may invoke fiduciary obligations between the Parties hereto.

24.11 Press Releases.

The Parties shall not issue a press release or make any public statement with respect to this Agreement or the tolling arrangement described herein without the prior written agreement of the other Party with respect to the form, substance and timing thereof, except either Party may make any such press release or public statement when the releasing Party is advised by its legal counsel that such a press release or public statement is required by law, regulation, stock exchange rules or in connection with the financing of the Facility, but in such event the Parties shall use their reasonably good faith efforts to agree as to the form, substance and timing of such release or statement.

24.12 Rights under the Federal Power Act.

(1) This Agreement shall not be subject to change through any unilateral application by either Party to any Governmental Authority including, but not limited to, the FERC pursuant to the provisions of Sections 205, 206 or 306 of the Federal Power Act, without the prior mutual written agreement of both Parties. Each of the Parties hereby irrevocably waives any right it may or can have to unilaterally seek any change, or to support any application, complaint, or action by any other party or Governmental Authority seeking such change.

(2) Absent agreement by the Parties to the proposed change, the standard of review for changes to any Section of this Agreement proposed by a Party, a non-party or the FERC acting sua sponte shall be the "public interest" standard of review set forth in United Gas Pipe Line Co. v. Mobile Gas Service Corp., 350 U.S. 332 (1956) and Federal Power Commission v. Sierra Pacific Power Co., 350 U.S. 348 (1956) (the "Mobile-Sierra" doctrine).

[Signature page follows this page]

IN WITNESS WHEREOF, each of Seller and Buyer has caused this Agreement to be executed on its behalf by its duly authorized representative to be effective as of the date first above written.

Shady Hills Power Company, L.L.C.

By: _____

Name: _____

Title _____

Date: _____

Florida Power Corporation
d/b/a Progress Energy Florida, Inc.

By: _____

Name: _____

Title: _____

Date: _____

EXHIBIT A
CAPACITY PRICE

The price to be used in calculating the Capacity Charge for a month pursuant to Section 9.2 (the "Capacity Price") shall be:

January	$3.78/kw-month
February	$3.78/kw-month
March	$2.70/kw-month
April	$2.70/kw-month
May	$3.78/kw-month
June	$8.10/kw-month
July	$8.10/kw-month
August	$8.10/kw-month
September	$3.78/kw-month
October	$2.70/kw-month
November	$2.70/kw-month
December	$3.78/kw-month

EXHIBIT B
VOM PRICE

The price for Energy and Ancillary Services to be used in calculating the VOM Charge for a month pursuant to Section 9.3 (the "VOM Price") is as follows:

While operating on Gas, the VOM Price shall be $.25/MWh.

While operating on Fuel Oil, the VOM Price shall be $2.12/MWh.

The VOM Price, applicable to both Gas and Fuel Oil, shall increase a rate of 3% per year after the first calendar year during the Delivery Term.

EXHIBIT C
START FEE

The "Start Fee" for each Successful Start of a Unit to be used in calculating the Start Charge for a month pursuant to Section 9.4 shall be as follows:

Unit 1: $11,500

Unit 2: $11,500

Unit 3: $11,500

The Start Fee shall increase at a rate of 3% per year after the first calendar year during the Delivery Term.

EXHIBIT D
CALCULATION OF ACTUAL EQUIVALENT AVAILABILITY

The Actual Equivalent Availability of the Facility shall be calculated during all On-Peak Hours for each Peak Month and Non-Peak Month during the Delivery Term using the following formula:

$$AEA\ (\%) = [(MDC*HRS)-(MDC*FOH)-\sum_{x=1}^{N}(FDQ_x*FDH_x)]/(MDC*HRS)$$

Where:

AEA	=	Actual Equivalent Availability of the Facility during a month (measured as a percentage) (%).
MDC	=	Monthly Demonstrated Capacity for the applicable month (MW).
HRS	=	all On-Peak Hours in the applicable month.
FOH	=	"Forced Outage Hours" means the total On-Peak Hours during a month in which the Facility experiences a Forced Outage.
FDQ	=	"Forced Derate Quantity" has the meaning set forth in Section 1.1(41).
FDH	=	"Forced Derate Hours" means, for each Forced Derate, the total number of On-Peak Hours, if any, during which the Forced Derate was in effect.
x	=	each Forced Derate during the applicable month.
N	=	the sum of all Forced Derates during the applicable month.

EXHIBIT E
CALCULATION OF THE AVAILABILITY REBATE

The Availability Rebate shall be calculated for each Peak Month and Non-Peak Month during the Delivery Term using the following formula:

Peak Months
When the Actual Equivalent Availability is less than 98%, the Seller shall pay to the Buyer the Availability Rebate which shall be calculated as follows:

Availability Rebate = (98% - AEA)*Capacity Charge for respective month

Non-Peak Months
When the Actual Equivalent Availability is less than 95%, the Seller shall pay to the Buyer the Availability Rebate which shall be calculated as follows:

Availability Rebate = (95% - AEA)*Capacity Charge for respective month

In the event the Actual Equivalent Availability for any month is below 50%, then the Availability Rebate shall be equal to the total Capacity Charge for the respective month. The Availability Rebates for all Peak Months and Non-Peak Months for a calendar year shall not exceed the total Capacity Charges paid by Buyer during such year. The Availability Rebate, if any, payable by Seller to Buyer shall be netted against charges payable by Buyer to Seller hereunder in the monthly invoice sent to Buyer.

EXHIBIT F
PERFORMANCE INFORMATION

Ambient conditions
Unit performance data

- MW
- MVAR
- Power Factor
- Frequency
- Breaker Position
- Temperatures
- Amps
- AGC Control Setpoints
- Heat rate
- Vibration Monitoring

Plant Switchyard data

- Voltage
- Breaker Position

Fuel data

- Temperature
- Btu content
- Specific gravity
- Pressures
- Tank Levels

Continuous Emissions Monitoring Systems (CEMS) data
Balance of Plant data

- Tank Levels
- Pressures
- Heater Temperatures

EXHIBIT G
OPERATIONAL LIMITATIONS

The Operational Limitations applicable to Units 1, 2 and 3 are as follows:

Minimum Unit Load	The minimum Unit load is 100 MW.
Start Notification	The minimum notification to start a Unit is one (1) hour.
Cancel Notification	Buyer may cancel a schedule at any time subject to the Operational Limitations. To avoid a start charge, Seller must cancel prior to initiation of the start sequence.
Minimum Run Time	Once a Unit is started, such Unit must run for a minimum of two (2) consecutive hours.
Minimum Time Off-line	The minimum time between a shut down of a Unit and a subsequent start up of such Unit is two (2) hours.
Number of Starts	Buyer may start each Unit no more than two (2) times per Day.
Ramp Rates	The ramp rate per Unit in response to a dispatch request from the minimum Unit load described above is 13 MW per minute. The ramp rates for starts are as follows: Hot Start: 30 Minutes to full load Warm Start: 30 Minutes to full load Cold Start: 30 Minutes to full load
Successful Start	A Successful Start means synchronization of the Unit to the transmission grid at full dispatched load within 30 minutes of a start initiation.
Switching Fuels	Once started, the Units may switch from Gas to Fuel Oil or from Fuel Oil to Gas without the schedule being taken to zero and without incurring a Start Charge.
Permit Hours	The Units shall not operate more than an average of 3390 hours per Unit per calendar year. The Units shall not operate more than an average of 1000 hours per Unit on Fuel Oil per calendar year. No Unit shall operate more than 5000 hours in a single year.
Min./Max. AGC	The minimum AGC set point is 110 MW. The maximum AGC set point is full load at ambient conditions.

Note: In the event the air permit for the Facility is amended or modified during the Agreement Term as a result of a change in any Governmental Rule or a new Governmental Rule, Seller shall have the right to amend or modify these Operational Limitations to be consistent with such air permit. Seller shall notify Buyer of any such changes in writing.

EXHIBIT H
NOTICES

Progress Energy Florida, Inc.

NOTICES:

Progress Energy Florida, Inc.
100 Central Ave.
BT9G
St. Petersburg, FL 33701
Attention: Director – Origination
and Account Management
Phone: 727.820.4550
Facsimile: 727.820.4598

PAYMENT:
Florida Power Corporation
Wachovia Bank, N.A.
Winston Salem, N.C.
ABA #053100494
Account Number 6264050823

SCHEDULING:

24 Hour Desk:
Phone: 919.546.6747
Facsimile: 919.546.3374

Shady Hills Power Company, L.L.C

NOTICES:

Shady Hills Power Company, L.L.C.
1155 Perimeter Center
Atlanta, Georgia 30338-5416
Attention: Legal Department, Commercial
Phone: 678.579.6900
Facsimile: 678.579.5988

PAYMENT:

Bank of America, N.A.
ABA # 111000012
Account Number 3751003269

SCHEDULING:

24 Hour Desk: 678.579.3008.
24 Hour Desk Fax: 678.579.5767

EXHIBIT I
INSURANCE

Seller Requirements

Seller shall at its sole expense purchase from and maintain in a company or companies lawfully authorized to conduct business in the jurisdiction where the Facility is located the insurance described in this Exhibit I. Such insurers shall maintain an A.M. Best's rating of A or better or if such insurer is not rated by A.M. Best, a comparable financial strength rating from a rating entity acceptable to Buyer.

Seller agrees to waive and shall cause its insurers to waive all rights of subrogation against Buyer. Buyer agrees to waive and shall cause its insurers to waive all rights of subrogation against Seller. Buyer shall be named as an additional insured under all coverages except All Risk Property Insurance, Workers Compensation and Business Interruption.

All Risk Property Insurance – Seller will procure and maintain all risk property insurance including coverage for physical damage, boiler and machinery and extra expense during the operation of the Facility. Coverage valuation shall be the actual repair or replacement costs subject to a policy limit no less than two (2) times the probable maximum loss for the Facility and no greater than the full replacement cost of the Facility. Coverage will also apply during inland transit (including brown water marine). Such coverage shall allow for reasonable sublimits for specific perils as consistent with Prudent Industry Practice.

Commercial General Liability – Seller will carry commercial general liability coverage to a limit of $2 million per occurrence, $4 million in aggregate. The insurance will cover Claims brought against Seller for third party bodily injury (including death), personal injury and property damage. The coverage will include provisions for broad form property damage, explosion, collapse and underground hazard coverage (XCU), cross liability, severability of interest and broad form contractual liability. In addition to this coverage, Seller will also require any contractors utilized to provide similar coverage during maintenance of the Facility covering Seller, lenders and other parties.

Excess Liability/Umbrella Coverage – Seller will carry excess liability/umbrella coverage insurance of $3 million per occurrence so that the total coverage for Commercial General Liability and Excess Liability/Umbrella Coverage shall be at least $5 million per occurrence, however, such $5 million total coverage may be made up of any combination of Commercial General Liability and Excess Liability/Umbrella Coverage at Seller's sole discretion.

Workers Compensation – Seller will carry workers compensation insurance covering statutory workers compensation obligations as required by state law. The coverage will also include $1 million in Employers Liability coverage insuring Claims brought by employees brought outside the Florida workers' compensation statute. Seller will also require the same coverage of any contractors employed for maintenance of the facility.

Business Interruption – Seller, in its sole discretion, may carry business interruption insurance to cover the actual loss sustained resulting from interruption of business as a result of physical loss or damage as insured by the all risk property insurance.

Buyer Requirements

During the period while Buyer is operating the Facility pursuant to Section 4.8 of this Agreement, Buyer shall at its sole expense purchase from and maintain in a company or companies lawfully authorized to conduct business in the jurisdiction where the Facility is located the insurance described in this Exhibit I. Such insurers shall maintain an A.M. Best's rating of A or better or if such insurer is not rated by A.M. Best, a comparable financial strength rating from a rating entity acceptable to Seller.

Seller agrees to waive and shall cause its insurers to waive all rights of subrogation against Buyer. Buyer agrees to waive and shall cause its insurers to waive all rights of subrogation against Seller. Seller shall be named as an additional insured under all coverages except All Risk Property Insurance and Workers Compensation.

All Risk Property Insurance – Buyer will procure and maintain all risk property insurance including coverage for physical damage, boiler and machinery and extra expense during the operation of the Facility. Coverage valuation shall be the actual repair or replacement costs subject to a policy limit no less than two (2) times the probable maximum loss for the Facility and no greater than the full replacement cost of the Facility. Coverage will also apply during inland transit (including brown water marine). Such coverage shall allow for reasonable sublimits for specific perils as consistent with Prudent Industry Practice.

Commercial General Liability – Buyer will carry commercial general liability coverage to a limit of $2 million per occurrence, $4 million in aggregate. The insurance will cover Claims brought against Buyer for third party bodily injury (including death), personal injury and property damage. The coverage will include provisions for broad form property damage, explosion, collapse and underground hazard coverage (XCU), cross liability, severability of interest and broad form contractual liability. In addition to this coverage, Seller will also require any contractors utilized to provide similar coverage during maintenance of the Facility covering Buyer and other parties.

Excess Liability/Umbrella Coverage – Buyer will carry excess liability/umbrella coverage insurance of $3 million per occurrence so that the total coverage for Commercial General Liability and Excess Liability/Umbrella Coverage shall be at least $5 million per occurrence, however, such $5 million total coverage may be made up of any combination of Commercial General Liability and Excess Liability/Umbrella Coverage at Buyer's sole discretion.

Workers Compensation – Buyer will carry workers compensation insurance covering statutory workers compensation obligations as required by state law. The coverage will also include $1 million in Employers Liability coverage insuring Claims brought by employees brought outside

the Florida workers' compensation statute. Buyer will also require the same coverage of any contractors employed for maintenance of the facility.

EXHIBIT J
FUEL OIL SPECIFICATIONS

METHOD		ASTM TEST
Flash Point Minimum	140° F or legal	D-93
Pour Point Maximum	20° F	D-97
Water & Sediment % Volume Maximum	0.05%	D-96/D1796
Carbon Residue on 10% Bottoms Max.	0.35%	D-189/D-4530
Distillation Points 90% Min. Max.	540° F 650° F	D-86
Viscosity @ 100° F Min. CS Max.	1.9 3.6	D-445
Ash Weight % Maximum	0.01	D-482
Gravity Minimum API	30	D-287/D-1298
Sulfur Weight % Maximum	0.05	D-1552/
BTU/Gallon Minimum	137,000	D-240
DuPont Stability Maximum	7 maximum	N/A
Oxidation Stability mg/100 ml Max.	2.5	D-2274

EXHIBIT K
FORM OF GUARANTY

GUARANTY AGREEMENT

This Guaranty Agreement (the "Guaranty"), dated effective as of _____, is made and entered into by _____, a _____corporation ("Guarantor").

WHEREAS, _____a _____ corporation (the "Company"), and_____ (the "Counterparty"), have entered into or are contemplating entering into the Tolling Agreement between Shady Hills Power Company, L.L.C. and Florida Power Corporation, d/b/a as Progress Energy Florida, Inc.") (such contract, as the same may from time to time be modified, amended and supplemented, shall be referred to herein as the "Contract");

WHEREAS, Company is a wholly owned subsidiary of Guarantor and Guarantor will directly or indirectly benefit from the transactions to be entered into between Company and Counterparty.

NOW THEREFORE, in consideration of Counterparty entering into the Contract, Guarantor hereby covenants and agrees as follows:

1. GUARANTY. Subject to the provisions hereof, (a) Guarantor hereby irrevocably and unconditionally guarantees the timely payment when due of the obligations of Company (the "Obligations") to Counterparty under the Contract, and (b) to the extent that Company shall fail or refuse to pay any Obligations, Guarantor shall promptly pay to Counterparty the amount due. This Guaranty shall constitute a guarantee of payment and not of collection. The liability of Guarantor under the Guaranty shall be subject to the following:

(a) Guarantor's obligations and liability under this Guaranty shall be limited to payment obligations only and Guarantor shall have no obligation to perform under any Contract, including without limitation, to sell, deliver, supply or transport gas, electricity or any other commodity;

(b) Guarantor's liability hereunder shall be and is specifically limited to payments expressly required to be made under the Contract (even if such payments are deemed to be damages); and

(c) the aggregate amount covered by this Guaranty shall not exceed the lesser of (i) all amounts Company owes to Counterparty pursuant to the Contract or (ii) _____ United States Dollars ($_____ U.S. Dollars).

This Guaranty shall continue to be effective or be reinstated, as the case may be, if at any time any payment of the Obligations by Company are annulled, set aside, invalidated, declared to be fraudulent or preferential, rescinded or must otherwise be returned, refunded or repaid by

Counterparty upon the insolvency, bankruptcy, dissolution, liquidation or reorganization of Company as though such payment or payments had not been made.

2. DEMANDS AND NOTICE. If (i) Company fails or refuses to pay any Obligations under the Contract or Company has an Event of Default, as defined in Section 11 of the Contract); and (ii) Counterparty elects to exercise its rights hereunder, Counterparty shall make a demand upon Guarantor (hereinafter referred to as a "Payment Demand"). A Payment Demand shall be in writing and shall reasonably and briefly specify in what manner and what amount Company has failed to pay and an explanation of why such payment is due, with a specific statement that Counterparty is calling upon Guarantor to pay under this Guaranty. A Payment Demand satisfying the foregoing requirements shall be required with respect to Obligations before Guarantor is required to pay such Obligations hereunder and shall be deemed sufficient notice to Guarantor that it must pay the Obligations within two (2) business days of Guarantor's receipt of such Payment Demand. A single written Payment Demand shall be effective as to any specific default during the continuance of such default, until Company or Guarantor has cured such default, and additional written demands concerning such default shall not be required until such default is cured.

3. REPRESENTATIONS AND WARRANTIES. Guarantor represents and warrants that:

(a) it is a corporation duly organized and validly existing under the laws of the State of _____ and has the corporate power and authority to execute, deliver and carry out the terms and provisions of the Guaranty;

(b) no authorization, approval, consent or order of, or registration or filing with, any court or other governmental body having jurisdiction over Guarantor is required on the part of Guarantor for the execution and delivery of this Guaranty; and

(c) this Guaranty, when executed and delivered, will constitute a valid and legally binding agreement of Guarantor, except as the enforceability of this Guaranty may be limited by the effect of any applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally and by general principles of equity.

4. SETOFFS AND COUNTERCLAIMS. WITHOUT LIMITING GUARANTOR'S OWN DEFENSES AND RIGHTS HEREUNDER, GUARANTOR RESERVES TO ITSELF ALL RIGHTS, SETOFFS, COUNTERCLAIMS AND OTHER DEFENSES TO WHICH COMPANY IS OR MAY BE ENTITLED TO ARISING FROM OR OUT OF THE CONTRACT, EXCEPT FOR DEFENSES ARISING OUT OF THE BANKRUPTCY, INSOLVENCY, DISSOLUTION OR LIQUIDATION OF COMPANY.

5. AMENDMENT OF GUARANTY. Guarantor may amend this Guaranty to increase the guaranty limit set forth in Paragraph 1(c) or to extend the termination date set forth in Section 7 without the consent of Counterparty provided that any such amendment shall be in writing and signed by Guarantor. No other term or provision of this Guaranty shall be amended, modified, altered, waived or supplemented except in a writing signed by both Guarantor and

Counterparty. Any such waiver as provided in this Section 5 shall be effective only in the specific instance and for the specific purpose for which it was given.

6. SUBROGATION. Guarantor shall be subrogated to all rights of Counterparty against Company in respect of any amounts paid by Guarantor pursuant to the Guaranty, provided that Guarantor waives any rights it may acquire by way of subrogation under this Guaranty, by any payment made hereunder or otherwise (including without limitation, any statutory rights of subrogation under Section 509 of the Bankruptcy Code, 11 U.S.C. § 509, or otherwise), for reimbursement, exoneration, contribution, indemnification, or any right to participate in any claim or remedy of Counterparty against any collateral which Counterparty now has or acquires, until all of the Obligations have been irrevocably paid to Counterparty in full. If any amount shall be paid to Guarantor on account of such subrogation rights at any time when all the Obligations shall not have been paid in full, such amount shall be held in trust for the benefit of Counterparty and shall forthwith be paid to Counterparty to be applied to the Obligations. Upon payment in full of the Obligations, Guarantor shall be subrogated to the rights of Counterparty against Company and Counterparty agrees to such actions as Guarantor may reasonably require to implement such subrogation.

7. WAIVERS AND TERMINATION. Guarantor hereby waives (a) notice of acceptance of this Guaranty; (b) presentment and demand concerning the liabilities of Guarantor, except as expressly hereinabove set forth; and (c) any right to require that any action or proceeding be brought against Company or any other person, or except as expressly hereinabove set forth, to require that Counterparty seek enforcement of any performance against Company or any other person, prior to any action against Guarantor under the terms hereof.

Except as to applicable statutes of limitation, no delay of Counterparty in the exercise of, or failure to exercise, any rights hereunder shall operate as a waiver of such rights, a waiver of any other rights or a release of Guarantor from any obligations hereunder.

Guarantor consents to the renewal, compromise, extension, acceleration or other changes in the time of payment of or other changes in the terms of the Obligations, or any part thereof or any changes or modifications to the terms of the Contract.

This Guaranty shall terminate in accordance with Section 19 of the Contract. No such termination shall affect Guarantor's liability with respect to any Obligations entered into prior to the time the termination is effective, which Obligations shall remain guaranteed pursuant to the terms of this Guaranty.

8. NOTICE. Any Payment Demand, notice, request, instruction, correspondence or other document to be given hereunder by any party to another (herein collectively called "Notice") shall be in writing and delivered personally or mailed by certified mail, postage prepaid and return receipt requested, or by facsimile, as follows:

To Guarantor: To Counterparty:

_____	_____
_____	_____
_____	_____
Attn: _____	Attn: _____
Fax No.: _____	Fax No.: _____

Notice given by personal delivery or mail shall be effective upon actual receipt. Notice given by facsimile shall be effective upon actual receipt if received during the recipient's normal business hours, or at the beginning of the recipient's next business day after receipt if not received during the recipient's normal business hours. All Notices by facsimile shall be confirmed promptly after transmission in writing by certified mail or personal delivery. Any party may change any address to which Notice is to be given to it by giving notice as provided above of such change of address.

9. ASSIGNMENT. Neither Guarantor nor Counterparty shall assign this Guaranty without the express written consent of the other party, which consent shall not be unreasonably withheld or delayed.

10. MISCELLANEOUS. **THIS GUARANTY SHALL IN ALL RESPECTS BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF FLORIDA.** All rights, remedies and powers provided in this Guaranty may be exercised only to the extent that the exercise thereof does not violate any applicable provision of law, and all of the provisions of this Guaranty are intended to be subject to all applicable mandatory provisions of law that may be controlling and to be limited to the extent necessary so that it will not render this Guaranty invalid or unenforceable in whole or in part. This Guaranty shall be binding upon Guarantor, its successors and permitted assigns and inure to the benefit of and be enforceable by Counterparty, its successors and permitted assigns. The Guaranty embodies the entire agreement and understanding between Guarantor and Counterparty and supersedes all prior agreements and understandings relating to the subject matter hereof. The headings in this Guaranty are for purposes of reference only, and shall not affect the meaning hereof.

[Signature page follows this page]

IN WITNESS WHEREOF, the Guarantor has executed this Guaranty on _____, but it is effective as of the date first above written.

Guarantor's Name

By: _____
Name: _____
Title: _____

EXHIBIT L
DEMONSTRATED CAPACITY ADJUSTMENT FACTORS

Month	Adjustment Factor
January	1.005
February	1.005
March	1.005
April	0.975
May	0.975
June	0.925
July	0.925
August	0.925
September	0.925
October	0.975
November	0.975
December	1.005

Exhibit ____ (SSW-2)

Letter of Intent to Purchase Capacity and Energy from Southern Companies

(Filed Separately)

Southern Company Generation
And Energy Marketing
600 North 18th Street
Post Office Box 2641
Birmingham, Alabama 35291

Tel 205-257-1000

Confidential (revised)

June 11, 2004

Mr. Robert F. Caldwell
Vice President, Regulated Commercial Operations
Progress Energy Florida
410 S. Wilmington Street
Raleigh, NC 27601

Dear Mr. Caldwell:

This Letter of Intent ("LOI") confirms the mutual desire and intent of Southern Company Services, Inc. ("SCS") and Florida Power Corporation (d/b/a Progress Energy Florida Inc.) ("FPC") (each a "Party" and jointly the "Parties") to enter into negotiations with regard to a power purchase agreement(s) ("Agreement(s)") between SCS and/or one or more of its affiliates (collectively "Southern Company") and FPC. Under such Agreement(s), Southern Company would supply and sell, and FPC would purchase and receive, capacity and energy from generating resources owned by Southern Company. In this regard, it is currently anticipated that such capacity and energy would be supplied under the Agreement(s) from each of: (i) Southern Power Company's Plant Franklin Unit No. 1 ("Plant Franklin"); and (ii) Georgia Power Company's and Gulf Power Company's ownership share of Plant Scherer Unit No. 3 ("Plant Scherer"). It is also expected that Southern Company would have the right to supply some or all of the capacity and energy under the Agreement(s) from alternate resources.

Following the execution and delivery of this LOI, the Parties shall commence to negotiate the definitive terms and conditions of the Agreement(s). In this regard, the Agreement would include provisions generally in accordance with the terms and conditions set forth in Exhibit A hereto and such other provisions as the Parties may mutually agree. By way of clarification, Exhibit A sets forth the terms and conditions applicable to the supply of capacity and energy from Plant Franklin and Plant Scherer. In addition, the Parties acknowledge that certain material terms and conditions would be included in the Agreement(s) that are not included in Exhibit A, many of which require further development and consideration.

The Parties agree to conclude the negotiation of a definitive Agreement(s) by no later than September 1, 2004 ("Negotiation Deadline"); provided, however, the Negotiation Deadline will be extended in 30 day increments unless either Party gives notice prior to such extension of its intent to terminate negotiations. If the Parties have not executed a definitive Agreement(s) by that date (or on such prior date that the Parties

mutually agree that they will be unable to negotiate the Agreement(s) ("Prior Date")), then either Party may terminate such negotiations in its sole discretion. In addition, upon the execution of this LOI and until the earlier of the Negotiation Deadline (as may be extended) or the Prior Date, but only so long as the Parties are actively engaged in ongoing negotiations to prepare and finalize the Agreement(s), (i) Southern Company shall not issue proposals for or negotiate a transaction(s) with any other party relative to the supply of the particular capacity and energy that would be supplied under the Agreement(s); and (ii) FPC shall not negotiate with any other party, or solicit or accept proposals for, any proposed transaction(s) or other arrangement(s) that would be intended to satisfy FPC's need for capacity and/or energy that could be supplied under the Agreement(s).

In addition, during the negotiation of the Agreement(s), the Parties also will engage in the negotiation of an agreement whereby Southern Company would provide FPC a right to negotiate to purchase certain additional capacity from the Plant Miller and Plant Scherer generating facilities. Such agreement would contain terms generally in accordance with Exhibit B. The Parties acknowledge, however, that such agreement would contain other material terms and conditions that are not set forth in Exhibit B

Notwithstanding the foregoing, neither Party shall be required to proceed with any transaction or assume any obligation unless the Parties have executed a definitive agreement(s). Each Party's decision to enter into a definitive agreement(s) shall be subject to its receiving all (i) requisite approvals of its management and/or board of directors; and (ii) federal and/or state regulatory approvals that are specified in such agreement(s), to the extent that the agreement(s) expressly states that it is contingent on such approvals. In addition, in the event that the Parties are unable to reach a definitive agreement(s) or if a Party decides in its sole discretion not to enter into a definitive agreement(s) for any reason, no Party shall be entitled to assert a claim against the other Party, including without limitation any claim based upon bad faith negotiations, detrimental reliance, or other legal or equitable theory.

The Parties do not intend by this LOI to form a partnership or corporation or enter into any business relationship. Unless a definitive agreement(s) is entered into, neither Party shall have any obligation with respect to this LOI regarding any negotiations, agreements, understandings between or actions taken by the Parties with respect to this LOI and/or the transactions contemplated hereby, except for each Party's obligation to negotiate exclusively with the other Party as set forth in the third sentence of the third paragraph of this LOI. Further, except as expressly stated herein, the existence of this LOI or ongoing discussions pursuant hereto in no way prohibit or restrain the Parties from engaging in any other present or future business activities or discussions with other persons or entities.

Please confirm that the terms of this LOI accurately reflect the understanding and intent of FPC by signing and returning a duplicate copy of this letter. We look forward to the opportunity to work with you in an effort to establish a mutually agreeable business arrangement.

Sincerely,

Norrie McKenzie
Vice President, Business Development
Southern Company Generation and Energy Marketing

Agreed and Accepted
this 28th day of June, 2004

FLORIDA POWER CORPORATION
d/b/a PROGRESS ENERGY FLORIDA, INC.

By:_____
Name:_____
Title:_____

EXHIBIT A

Southern Company Generation and Energy Marketing
Terms and Conditions for Combined Cycle Portion of Proposal to Progress Energy Florida
Proprietary Confidential Business Information
May 4, 2004

Terms and Conditions for Combined Cycle Capacity Unit

General:	The capacity and energy described in this term sheet comprise one part of a single proposal that also includes the purchase and sale of capacity from Georgia Power and Gulf Power's ownership share of Scherer Coal Fired Generating Station Unit 3 located in Monroe County, Georgia.
Source:	The designated resource will be Southern Power Company's Plant Franklin Unit 1 located in Smiths, Alabama fueled with natural gas.
Capacity:	The contract capacity, measured at the Delivery Point, is estimated to be 351Mw (approximately 64.4% of the entire output). The contract capacity amount will vary by year based on actual performance tests adjusted to Summer peak conditions.
Term:	June 1, 2010 – May 31, 2015. PEF shall have the option to extend the Term by two years by giving Southern notice by January 1, 2010.
Product Firmness:	The capacity and energy delivered shall be unit contingent. Southern may, at its discretion, whether the designated unit is available or unavailable, deliver scheduled energy from alternate resources, provided such delivery of energy is over a firm transmission path. In the event PEF elects to accept the energy delivered over a non-firm transmission path, then Southern shall be deemed to have been available for the Mwhs delivered over a non-firm transmission path.
Unit Availability:	The unit's peak period availability is defined as the total hours the unit is available for generation during the peak period of May through September divided by the total hours in such period. Southern Power may earn a bonus of 1.5% of the capacity payment for each 1% increase in the peak-period availability above 98%. A reduction in the capacity payment of 1.5% shall be applied for each 1% decrease in peak-period availability below 97%. During periods when energy is supplied from alternate resources, the capacity from the unit(s) shall be deemed to be available. The unit's non-peak period availability is defined as the total hours the unit is available for generation during the non-peak period of October through April divided by the total hours in such period. In years "major maintenance" is not performed, Southern Power may earn a bonus of 0.4% of the capacity payment for each 1% increase in non-peak period availability above 90%. A reduction in capacity payment of 0.4% shall be applied for each 1% decrease in non-peak period availability below 90%. In years "major maintenance" is performed, Southern Power may earn a bonus of 0.4% of the capacity payment for each 1% increase in non-peak period availability above 90%. A reduction in capacity payment of 0.4% shall be applied for each 1% decrease in non-peak period availability below 83%. During periods when energy is supplied from alternate resources, the capacity from the unit(s) shall be deemed to be available. Southern agrees that a non-peak period availability target

of 83% will be applied no more than once during the term of the agreement. Further, a non-peak period availability target of 83% will be applied only during a year in which "major maintenance" is performed.

With the exception of periodic water washes, which are recommended by manufacturer, no scheduled maintenance will be performed during the summer months (June – August). Scheduled maintenance will be performed according to manufacturer's specifications.

Scheduling:

Initial Schedule

9 a.m. CPT Business day prior to use.

Minimum Duration of Schedule

Sixteen (16) consecutive hours

Minimum Down Time

Eight (8) consecutive hours

Scheduling Increments

Operating Mode	Mw
Block 1	50
Blocks 2-8	50 Mw increments up to Contract Capacity (estimated at 351 Mw)

Block 8 increment will be less than 50 Mw.

In the event the unit is available and PEF has not scheduled energy, Sellers, at their discretion, may utilize the energy output of the unit.

Change in Schedule

With four (4) hours prior notice, PEF may make two (2) intra-day scheduling changes, provided (i) the requested schedule changes comply with the scheduling parameters previously outlined in the Scheduling section of this term sheet, (ii) transmission is available, (iii) natural gas is available, (iv) requested schedule changes comply with natural gas nomination cycles, and (v) any costs incurred by Southern to accommodate the schedule change are reimbursed by PEF. Such costs shall include, but not be limited to, items such as gas commodity, imbalance charges, and other penalties.

Pricing:

Capacity Charge

$6.18/kW-mo, levelized over the proposed term.

Capacity price covers capital costs, cost of non-environmental capital additions, fixed O&M, and allocated overhead expenses.

Fixed O&M

Included in Capacity Price

Fixed Fuel Transportation

Southern will charge PEF the actual costs incurred for Fixed Fuel Transportation required to deliver gas to the facilities. Southern is open to discuss alternatives to enhance the fuel reliability of the designated resource.

Energy Price

The energy price (EP) formula shall be as follows:

If the designated resource is operating, the energy price (EP) formula shall be as follows:

EP = (Guaranteed Heat Rate * Commodity Charges) + Variable O&M

If Southern elects to supply energy from an alternate resource, the energy price shall be:

EP = (Guaranteed Heat Rate * 0.98 * Commodity Charges) + Variable O&M

Guaranteed Heat Rate

Capacity Amounts	March – Oct. (Btu/kWh)	Nov. – Feb. (Btu/kWh)
50 Mw	8,300	8,550
100 Mw	7,800	8,050
150 Mw up to Contract Capacity	7,600	7,850

Commodity Charges

The Gas Commodity Charge shall be, for each MMBtu of gas delivered hereunder, an amount equal to the Gas Daily Midpoint price in $/MMBtu as published by Platts in Gas Daily in the Daily Price Survey section under the Midpoint Column for Southern Natural, La plus two (2) cents ("Gas Daily Price") plus Southern Natural Gas' Zone 0 to 2 firm variable transportation charges, surcharges, fuel retention charges and any applicable taxes. The Gas Daily Price shall be effective for the flow dates indicated under the Midpoint Column. If a Gas Daily Price is not published in the Daily Price Survey (e.g., holiday or weekend), the next available published price shall be used to determine the cost. Any assumed fuel rate and variable charges are subject to regulatory change in Southern Natural Gas' tariff.

Variable O&M

$2.10/hr (2010$) times the contract capacity in each hour that has been scheduled, plus $0.65/MWh (2010$), escalating every June 1 at a mutually agreeable fixed schedule or index that reflects the costs of providing the service.

Startup Charges

Starts	Block 1	Blocks 2-6
(0-50)	$0	$0
(51-150)	$3,300	$8.80/Mw
(151+)	$10,000	$26.67/Mw

All charges are per turbine start and accumulated per calendar year per operating mode separately. In the event Southern elects to supply from an alternate resource, start charges will be imposed as if the energy were supplied from Franklin Unit 1. A start shall be defined as any instance of a change from zero to a positive quantity; provided, however, that until Franklin Unit 1 has actually been started 150 times to support PEF's schedule (i.e., a start that occurs prior to or during such schedule), PEF shall not be charged a $10,000 or $26.67/Mw start charge and the $3,300 or $8.80 Mw start charge shall apply for all starts above 50. The parties will negotiate the definition of a successful start in the PPA.

Startup charges are in 2010$ and will escalate every June 1 at a mutually agreeable fixed schedule or index that reflects the costs of providing the service.

Transmission:

PEF shall make commercially reasonable efforts to request and/or procure firm transmission service on the system(s) of applicable transmission provider(s) for delivery of the full amount of power purchased to the Southern/Florida interface. If service for the full amount of power purchased is not offered (in total) to PEF by any party(ies) within 15 months after the date of the PPA ("Transmission Deadline"), PEF may elect to reduce the contract capacity, but to no less than an amount for which transmission service is offered. Unless the parties otherwise agree, PEF will have 90 calendar days after the Transmission Deadline to notify Southern of its desire to: (i) reduce the contract capacity in this manner; or (ii) if service for at least 80% of the power purchased from Franklin Unit 1 is not offered in total by any party(ies) by the Transmission Deadline, terminate both (but not less than both) the PPAs for Scherer 3 and Franklin Unit 1. If PEF elects to reduce the contract capacity to an amount less than 80% of the power purchased from Franklin Unit 1, Southern shall have 90 days in which to either accept the new contract capacity or to terminate both (but not less than both) the PPAs..

In addition, in the event that service for some or all of the power purchased from Franklin Unit 1 is offered to PEF, but the price (at the time the offering is made) for all or any portion of that service is higher than Southern's tariff rate, Southern shall have the option of reducing the contract capacity price in order to offset the incremental price for all or any portion of such service. If Southern does not elect to offset the incremental price, PEF shall be entitled to: (i) reduce the capacity purchased from Franklin Unit 1 by an amount no greater than the amount of service for which Southern does not elect to offset the incremental price; or (ii) if Southern does not offset the incremental price so that PEF in effect is able to procure transmission service for 80% of the power purchased at the tariff rate, terminate both (but not less than both) the PPAs with respect to Scherer 3 and Franklin Unit 1. If PEF elects to reduce the contract capacity to an amount less than 80% of the power purchased from Franklin Unit 1, Southern shall be entitled to either accept the new contract capacity or terminate both (but not less than both) the PPAs. The process set forth in this paragraph shall coincide with the process set forth in the previous paragraph.

In the event that either party elects to terminate the PPAs, the parties will discuss potential modifications to the PPA(s) that address the transmission issue; provided, however, neither party shall be obligated to agree to any modifications it determines, in its sole discretion, are unacceptable.

Delivery Point:

The Delivery Point shall be the high side of the GSU transformer of the designated resource.

Southern may, at its discretion, deliver scheduled energy from alternate resources. In such event, Southern's selection of alternate Delivery Points will not adversely affect PEF's costs or ability to receive and transmit the power.

Change in Law:

PEF shall be responsible for all increases in costs (in the aggregate, including fixed and variable operating costs and capital expenditures) associated with each generating unit used to serve PEF that result from changes in laws or regulations, or interpretations thereof, enacted or adopted after February 6, 2004 ("Change in Law). In the event capital expenditures are required, PEF shall be responsible for its pro rata share of the annual amortized amount of the capital investment over the remaining years of the agreement. Southern shall provide notice to PEF of all such Changes in Law and the resulting expected increase in costs. PEF shall have the right to determine whether it agrees with Southern: (i) that a Change in Law has occurred; and (ii) regarding the effect on generation costs. If PEF does not concur with Southern, it may initiate an arbitration proceeding to resolve the dispute (i.e., whether a Change in Law has occurred and/or the extent to which it affects generation costs). Once the costs resulting from Changes in Law for any generation resource occur, then Southern may charge PEF to recover such costs.

RTO Formation:

In the event the development of one or more Regional Transmission Organization(s) ("RTO") materially changes the scheduling requirements and/or cost structure associated with the delivery of energy to/from the designated Delivery Point, Southern shall be responsible for all scheduling requirements and basis costs to the Delivery Point. PEF shall be responsible for all scheduling requirements and basis costs from the Delivery Point. Under no circumstances shall the creation of the RTO expose Southern to congestion or other basis costs associated with PEF's delivery of energy from the designated Delivery Point to any further point(s) of delivery. Likewise, under no circumstances shall the creation of the RTO expose PEF to congestion or other basis costs for Southern's delivery of energy to the designated Delivery Point.

Conditions Precedent:

The parties acknowledge that definitive agreement(s) will be conditioned upon the following:

1. Florida Public Service Commission ("FPSC") approval for recovery of costs incurred by PEF under the purchased power agreement (initial approval only, not annual review). PEF shall file the PPAs for Scherer 3 and Franklin Unit 1 ("PPAs") with the FPSC within 30 days after contract execution and shall make diligent efforts to obtain FPSC approval. If approval of both of the PPAs is not received within 6 months after the execution of the PPAs by the parties (or such other date as mutually agreed by the parties) ("FPSC Deadline"), PEF may immediately terminate both of the PPAs by providing notice within 30 days after the FPSC Deadline. In addition, instead of terminating both of the PPAs, PEF may elect within 30 days after the FPSC Deadline to: (i) continue with any PPA approved by the FPSC and terminate the other PPA; or (ii) continue with any PPA approved by the FPSC and waive the condition precedent for (and thus also continue with) any the PPA(s) not approved (such continued PPA(s) being referred to as "Continued PPAs"). Provided, however, if there is only one Continued PPA, Southern may within 30 days elect to terminate such PPA ("Southern's Election"). If Southern elects to exercise such termination rights, PEF shall have the right within 30 days after Southern's Election to waive the FPSC condition precedent with respect to both (but not less than both) of the PPAs, in which case both of the PPAs shall continue in full force and effect. If PEF does not waive the condition precedent for both PPAs, any Continued PPAs not terminated by Southern shall remain in effect.
2. If appropriate, FERC approval without modifications that materially impact the benefits of the PPA to either party.
3. Approval of the PEF Board of Directors and as appropriate, approval of Southern Company executive management or Board of Directors.

All prices are quoted in nominal year dollars unless otherwise indicated.

EXHIBIT A

Southern Company Generation and Energy Marketing
Terms and Conditions for Combined Cycle Portion of Proposal to Progress Energy Florida
Proprietary Confidential Business Information
May 4, 2004

Terms and Conditions for Scherer Capacity

General:	The capacity and energy described in this term sheet comprises one part of a single proposal that also includes the purchase and sale of capacity and energy from Southern Power Company's Franklin Unit 1.
Source:	The designated resource will be the Scherer 3 coal fired steam turbine owned by Georgia Power Company and Gulf Power Company (Sellers).
Capacity:	8.77% of the demonstrated output of Scherer 3, which is estimated to be 74 Mw
Term:	June 1, 2010 – May 31, 2015
Unit Availability	The unit's annual availability is defined as the total hours the unit is available for generation during the contract year divided by 8760, less scheduled maintenance hours and approved unscheduled maintenance hours. Sellers may earn a bonus of 1% of the annual capacity payment for each 1% increase in the annual availability above 94%. A reduction in the annual capacity payment of 1% shall be applied for each 1% decrease in annual availability below 94%. During periods when energy is supplied from alternate resources, the capacity from the unit(s) shall be deemed to be available.
Product Firmness:	Unit contingent. Seller will supply, and PEF shall accept, energy during all periods the unit is available and for which PEF submits a schedule. Southern may, at its discretion, whether the designated unit is available or unavailable, deliver scheduled energy from alternate resources, provided such delivery of energy is over a firm transmission path. In the event PEF elects to accept the energy delivered over a non-firm transmission path, then Southern shall be deemed to have been available for the Mwhs delivered over a non-firm transmission path.
Capacity Charge:	$12.94/kW-mo, levelized over the proposed term. Capacity price covers capital costs, cost of non-environmental capital additions, fixed O&M, and allocated overhead expenses.
Scheduling:	
Initial Schedule	10 a.m. CPT Business day prior to use.
Schedule Provisions	If the unit is available, PEF may schedule up to their pro-rata share of energy from the unit. In the event the unit is available and PEF has not scheduled energy, Southern, at its discretion, may utilize the energy output of the unit.

Minimum Schedule	Fifty percent (50%) of contract capacity in any hour PEF schedules energy
Minimum Duration of Schedule	Twenty-four (24) consecutive hours
Minimum Down Time	Twenty-four (24) consecutive hours
Change in Schedule	With four (4) hours prior notice, PEF may make two intra-day scheduling changes, provided (i) the requested schedule changes comply with the scheduling parameters previously outlined in this Scheduling section of this term sheet, (ii) transmission is available to provide the requested schedule changes, and (iii) any costs incurred by Southern to accommodate the schedule change are reimbursed by PEF.
Energy Price Associated with the Coal Block:	Energy costs will be determined based on the blended fuel purchased costs (provided 2 business days prior to the month) for Scherer Unit 3 times the heat rate plus fuel handling costs, variable O&M costs and applicable emission costs. The heat rate, fuel handling costs, and variable O&M costs used in the energy billing will be the annual values for the unit shown in Schedule 2 of Southern Company's Intercompany Interchange Contract ("IIC") in effect at the time. The emissions costs will be based on the IIC procedures in effect at the time.
Start Charges:	$3,500 (2010$) for each start charge, escalating every June 1 at a mutually agreeable fixed schedule or index that reflects the costs of providing the service. A start shall be defined as any instance of a schedule change from zero to a positive quantity.
Transmission:	PEF shall make commercially reasonable efforts to request and/or procure firm transmission service on the system(s) of applicable transmission provider(s) for delivery of the full amount of power purchased to the Southern/Florida interface. If service for the full amount of power purchased is not offered (in total) to PEF by any party(ies) within 15 months after the date of the PPA ("Transmission Deadline"), PEF may elect to reduce the contract capacity, but to no less than an amount for which transmission service is offered. Unless the parties otherwise agree, PEF will have 90 calendar days after the Transmission Deadline to notify Southern of its desire to: (i) reduce the contract capacity in this manner; or (ii) if service for at least 80% of the power purchased from Scherer 3 is not offered in total by any party(ies) by the Transmission Deadline, terminate both (but not less than both) the PPAs for Scherer 3 and Franklin Unit 1. If PEF elects to reduce the contract capacity to an amount less than 80% of the power purchased from Scherer 3, Southern shall have 90 days in which to either accept the new contract capacity or to terminate both (but not less than both) the PPAs. In addition, in the event that service for some or all of the power purchased from Scherer 3 is offered to PEF, but the price (at the time the offering is made) for all or any portion of that service is higher than Southern Company's tariff rate, Sellers shall have the option of reducing the contract capacity price in order to offset the incremental price for all or any portion of such service. If Southern does not elect to offset the incremental price, PEF shall be entitled to: (i) reduce the capacity purchased from Scherer 3 by an amount no greater than the amount of service for which Southern does not elect to offset the incremental price; or (ii) if Southern does not offset the incremental price so that PEF in effect is able to procure transmission service for 80% of the power purchased at the tariff rate, terminate both (but not less than both) the PPAs with respect to Scherer 3 and Franklin Unit 1. If PEF elects to reduce the contract capacity to an amount less than 80% of the power purchased from Scherer 3, Southern shall be entitled to either accept the new contract capacity or to terminate both (but not less than both) the PPAs. The process set forth in this paragraph shall coincide with the process set forth in the previous paragraph. In the event that either party elects to terminate the PPAs, the parties will discuss potential modifications to the PPA(s) that address the transmission issue; provided,

however, neither party shall be obligated to agree to any modifications it determines, in its sole discretion, are unacceptable.

Delivery Point:

The Delivery Point shall be at the point where the resource interconnects to the Georgia Integrated Transmission System at the Scherer 500 kV bus (ITS Level B-1).

Southern may, at its discretion, deliver scheduled energy from alternate resources to any available "Into Southern" interface, provided Southern's selection of alternate Delivery Points does not adversely affect PEF's cost or ability or cost to receive and transmit the power.

Change in Law:

PEF shall be responsible for all increases in costs (in the aggregate) (including fixed and variable costs and capital expenditures) associated with each generating unit used to serve PEF that result from changes in laws or regulations, or interpretations thereof, enacted or adopted after February 6, 2004 ("Change in Law). In the event capital expenditures are required, PEF shall be responsible for its pro rata share of the annual amortized amount of the capital investment over the remaining years of the agreement. Sellers shall provide notice to PEF of all such Changes in Law and the resulting expected increase in costs. PEF shall have the right to determine whether it agrees with Sellers: (i) that a Change in Law has occurred; and (ii) regarding the effect on generation costs. If PEF does not concur with Sellers, it may initiate an arbitration proceeding to resolve the dispute (i.e., whether a Change in Law has occurred and/or the extent to which it affects generation costs). Once the costs resulting from Changes in Law for any generation resource occur, then Sellers may charge PEF to recover such costs.

RTO Formation:

In the event the development of one or more Regional Transmission Organization(s) ("RTO") materially changes the scheduling requirements and/or cost structure associated with the delivery of energy to/from the designated Delivery Point, Sellers shall be responsible for all scheduling requirements and basis costs to the Delivery Point. PEF shall be responsible for all scheduling requirements and basis costs from the Delivery Point. Under no circumstances shall the creation of the RTO expose Sellers to congestion or other basis costs associated with PEF's delivery of energy from the designated Delivery Point to any further point(s) of delivery. Likewise, under no circumstances shall the creation of the RTO expose PEF to congestion or other basis costs for Sellers' delivery of energy to the designated Delivery Point.

Conditions Precedent:

The parties acknowledge that definitive agreement(s) will be conditioned upon the following:

4. Florida Public Service Commission ("FPSC") approval for recovery of costs incurred by PEF under the purchased power agreement (initial approval only, not annual review). PEF shall file the PPAs for Scherer 3 and Franklin Unit 1 with the FPSC within 30 days after contract execution and shall make diligent efforts to obtain FPSC approval. If approval of both of the PPAs is not received within 6 months after the execution of the PPAs by the parties (or such other date as mutually agreed by the parties) ("FPSC Deadline"), PEF may immediately terminate both of the PPAs by providing notice within 30 days after the FPSC Deadline. In addition, instead of terminating both of the PPAs, PEF may elect within 30 days after the FPSC Deadline to: (i) continue with any PPA approved by the FPSC and terminate the other PPA; or (ii) continue with any PPA approved by the FPSC and waive the condition precedent for (and thus also continue with) any PPA(s) not approved (such continued PPA(s) being referred to as "Continued PPAs"). Provided, however, if there is only one Continued PPA, Southern may within 30 days elect to terminate such PPA ("Southern's Election"). If Southern elects to exercise such termination rights, PEF shall have the right within 30 days after Southern's Election to waive the FPSC condition precedent with respect to both (but not less than both) of the PPAs, in which case both of the PPAs shall continue in full force and effect. If PEF does not waive the condition precedent for both PPAs, any Continued PPA not terminated by Southern shall remain in effect.
5. If appropriate, FERC approval without modifications that materially impact the benefits of the PPA to either party.
6. Approval of the PEF Board of Directors and as appropriate, approval of Southern Company executive management or Board of Directors.

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EXHIBIT B

Right to Negotiate for Purchase of Miller and Scherer Capacity

Miller

- If SCS concludes (at its sole discretion) that the portion of Plant Miller capacity currently being sold at wholesale will not be used for retail service, then FPC will have the right to enter into exclusive negotiations for three (3) months ("Negotiation Period") to purchase a pro rata portion of such capacity ("Miller Capacity"). FPC must exercise this right by providing SCS notice within 30 days after notification by SCS that the Miller Capacity is available (such notice from FPC is referred to as the "Negotiation Notice").
- If FPC does not timely provide the Negotiation Notice, SCS shall be free to market the Miller Capacity to any third party(ies) without restriction.
- If FPC timely provides the Negotiation Notice, SCS shall provide to FPC (among other terms and conditions) the following proposed terms for FPC's purchase of the Miller Capacity: (i) capacity and energy prices; (ii) the charge for variable operation and maintenance costs; (iii) heat rate; and (iv) availability guarantees (such terms in (i) through (iv) are referred to as the "Specified Terms"). If the parties are unable to reach a mutually acceptable agreement during the Negotiation Period for the purchase and sale of the Miller Capacity, then SCS will be free to market such capacity to other parties. Provided, however, for the period of one year after the expiration of the Negotiation Period, before SCS markets the Miller Capacity to any other party at Specified Terms that are materially more favorable in the aggregate than the Specified Terms previously offered to FPC (without regard to any other terms and conditions of a potential transaction), SCS must first provide FPC the right to negotiate with SCS for thirty (30) days for the purchase of the Miller Capacity at such more favorable Specified Terms.
- The Franklin contract that may be executed will be unaffected unless and until the Parties reach a mutually acceptable agreement for the Miller Capacity. In the event a mutually acceptable agreement is reached, then the capacity under the Franklin contract will be reduced appropriately.

Scherer

- If the 75 MW of Scherer 3 capacity that is currently a component of a potential transaction between SCS and a wholesale customer becomes available because the transaction is not consummated, then FPC will have a right to purchase a pro rata portion of such capacity at the same terms and conditions set forth in the PPA that may be executed for Scherer 3. FPC must exercise this right to purchase within 30 days of notification that the capacity is available.
- If FPC elects to purchase such capacity, then the amount of capacity purchased from Plant Franklin will be reduced appropriately.

Exhibit ____ (SSW-3)

Summary of Benefits of the Shady Hills Tolling Agreement

NPV Costs, 2004$:	
Capacity Charges for Shady Hills	**($117,680,000)**
Gas Pipeline Reservation Charges	**($33,556,000)**
Additional Equity Cost	**($8,628,000)**
NPV Benefits, 2004$:	
Capacity Deferral Benefit (Advancement Cost)	**($69,872,000)**
Energy Savings, net	**$285,179,000**

Net Benefit to PEF: $55,442,000, NPV

Exhibit ____ (SSW-4)

Summary of Costs and Benefits of the Unit Power Sales Agreement with the Southern Companies

NPV Costs, 2004$:

Capacity Charges for Scherer and Franklin	**($97,640,000)**
Transmission Charges	**($25,750,000)**
Gas Pipeline Reservation Charges	**($12,500,000)**
Additional Equity Cost	**($7,940,000)**

NPV Benefits, 2004$:

Capacity Deferral Benefit	**$50,110,000**
Energy Savings, net	**$84,970.000**
Economy Energy from Southern System	**$11, 118,000**

Net Benefit to PEF: $2,368,000, NPV