

LEE COUNTY BOARD OF COUNTY COMMISSIONERS  
AGENDA ITEM SUMMARY

BLUE SHEET NO: 20030576

1. REQUESTED MOTION:

**ACTION REQUESTED:** Approve and authorize the Chairman to sign the Amended and Restated Power Purchase Agreement between Lee County and Seminole Electric Cooperative, Inc.

**WHY ACTION IS NECESSARY:** Board approval required for contracts related to SW Enterprise Fund Revenue.

**WHAT ACTION ACCOMPLISHES:** Provides an agreement for the County to sell and Seminole to buy the electricity generated by the County's waste to energy facility.

2. DEPARTMENTAL CATEGORY: SOLID WASTE  
COMMISSION DISTRICT #: CW

A8A

3. MEETING DATE:

05-27-2003

4. AGENDA:

- \_\_\_ CONSENT
- ADMINISTRATIVE
- \_\_\_ APPEALS
- \_\_\_ PUBLIC
- \_\_\_ WALK ON
- TIME REQUIRED:

5. REQUIREMENT/PURPOSE:

- (Specify)
- \_\_\_ STATUTE
  - \_\_\_ ORDINANCE
  - \_\_\_ ADMIN. CODE
  - OTHER Power Purch. Agrmt.

6. REQUESTOR OF INFORMATION:

- A. COMMISSIONER:
- B. DEPARTMENT: Lee County-Public Works
- C. DIVISION/SECTION: Solid Waste Division
- BY: Lindsey Sampson, Solid Waste Director

DATE:

Lindsey Sampson 5/13/03

7. BACKGROUND:

On May 18, 1999, the County and Seminole approved an agreement for the sale/purchase of electrical energy and capacity. The sale of energy was for a long term and the sale of capacity was for a 5-year term with both energy and capacity sales commencing on Dec. 15, 1999. Conditions of this Agreement allowed the County and Seminole to renegotiate the Agreement beginning in the third year of the Agreement such that either Party could request changes to the Agreement prior to the end of the 5-year term for capacity sales.

In October, 2002, Seminole timely notified the County that it desired to renegotiate the Agreement. County staff has been negotiating with Seminole during the last several months. Staff has also reviewed the Florida electric energy market (through a Consultant) to evaluate the potential for other purchasers of electricity. This endeavor did not provide any alternate purchasers that could offer an arrangement that would be more favorable compared to the Seminole Agreement.

The Amended and Restated Agreement will provide Lee County with firm sales of the WTE electricity through 2020 and capacity through 2011. Either Party may request to renegotiate the Agreement in 2008. This Agreement provides capacity pricing 25% higher than the existing Agreement resulting in an overall revenue increase of approximately 3.6 %. The price for energy is indexed monthly based on Seminole's ongoing fuel mix purchases.

8. MANAGEMENT RECOMMENDATIONS:

9. RECOMMENDED APPROVAL

A DEPARTMENT DIRECTOR	B PURCH. OR CONTRACTS	C HUMAN RESOURCES	D OTHER	E COUNTY ATTORNEY	F BUDGET SERVICES				G COUNTY MANAGER
					OA	OM	Risk	GC	
<i>[Signature]</i> 5-12-03	<i>[Signature]</i> 5/12/03	<i>[Signature]</i> N.A.		<i>[Signature]</i> 5/13/03	<i>[Signature]</i> 5/15/03	<i>[Signature]</i> 5/14/03	<i>[Signature]</i> 5/12/03	<i>[Signature]</i> 5/15/03	<i>[Signature]</i> 5-12-03

10. COMMISSION ACTION:

- \_\_\_ APPROVED
- \_\_\_ DENIED
- \_\_\_ DEFERRED
- \_\_\_ OTHER

RECEIVED BY  
BY ADMIN. AM  
5-13-03  
4:40  
COUNTY ADMIN.  
FORWARDED TO:  
5/15/03

REC'D.  
by CO. ATTY.  
5/13/03  
11:20 AM  
CO. ATTY 5/13/03  
FORWARDED TO:  
Budget  
5/13/03

C

DRAFT

**AMENDED AND RESTATED  
ELECTRIC POWER PURCHASE AGREEMENT**

THIS ELECTRIC POWER PURCHASE AGREEMENT (this "Agreement") is made and entered into as of this \_\_\_\_ day of April, 2003, by and between Seminole Electric Cooperative, Inc. ("Seminole"), a corporation organized and existing under the laws of the State of Florida (the "State") and authorized to do business in the State and Lee County, Florida ("Lee County"), a political subdivision of the State. Seminole or Lee County or both may be referred to herein as the "Party" or the "Parties," as the context of the usage of such term may require.

**RECITALS**

WHEREAS, Lee County owns and contracts for the operation and maintenance of the Facility (as defined herein); and

WHEREAS, in accordance with the terms of the Electric Power Purchase Agreement entered into as of May 18, 1999 between Lee County and Seminole (the "Original Agreement"), Lee County sells and delivers, and Seminole purchases and accepts, all of the Net Electric Capacity and Net Electric Energy (as such terms are defined therein) generated by the Facility.

WHEREAS, Lee County and Seminole desire that this Agreement amend and restate, in its entirety, the terms of the Original Agreement;

NOW, THEREFORE, in consideration of the mutual promises and covenants of each to the other contained in this Agreement and other good and valuable consideration, receipt of which is hereby acknowledged, Seminole and Lee County do hereby covenant and agree as follows:

**SECTION 1**

**DEFINITIONS**

The following are definitions of certain terms used in this Agreement:

"Additional Facility Capacity" means Lee County's procurement, implementation and provision of one or more additional boiler unit trains and attendant electrical generation capacity equipment at the Facility which increases the total capacity of the Facility in excess of ~~79~~59 MW.

"Appendix or Appendices" means the schedules, exhibits and attachments to this Agreement which are incorporated in and made a part of this Agreement.

"Capacity Price" means that dollar amount determined pursuant to Section 4.1.2.

"Change(s) in Law" shall have the meaning set forth in Section 15.1 of this Agreement.

"Delivery Point" means the interconnection point ~~with~~<sup>inside</sup> FP&L's transmission system at the FP&L Buckingham substation as defined in the Interconnection Agreement dated October 29, 1992, between Lee County and FP&L.

"Dispute" shall have the meaning set forth in Section 22 of this Agreement.

"Electric Power Delivery Date" means ~~insert actual date~~ <sup>December 16, 2001</sup> January 1, 2004. (Note to Lee County - this will give Seminole time to obtain the necessary approval from RUS for this agreement)

"Energy Price" means that dollar amount determined pursuant to Section 4.1.3.

"EPT" means Eastern Prevailing Time.

"Facility" means the solid waste fueled Resource Recovery Facility located on Buckingham Road east of Fort Myers in Lee County, having an installed capacity of approximately thirty-nine (39) MW of electric power; which will include the Proposed Expansion Project, for a total Facility capacity of approximately of fifty nine (59) MW, which capacity is and ~~is~~-will be limited by certain operational constraints, including fuel availability and use of Facility generated electric power for on-site use.

"Force Majeure" means any act, event or condition, other than a labor strike, work stoppage or slowdown, that has a direct, material adverse effect on the rights or the obligations of a Party under this Agreement, if such act, event or condition is beyond the reasonable control of the Party relying thereon as justification for not performing an obligation or complying with any condition required of such Party under this Agreement. Such acts, events or conditions, to the extent they qualify as a Force Majeure pursuant to the immediately preceding sentence of this definition, may include, but shall not be limited to, the following:

- (1) An act of God (except normal weather conditions for the geographic area of the Facility site), hurricane, tornado, epidemic, landslide, lightning, earthquake, flood, fire or explosion; or similar occurrence, an act of the public enemy; war; blockade, insurrection, riot, general unrest, restraint of government and people, civil disturbance, sabotage or similar occurrence;
- (2) The order, injunction or judgment of any federal, State or local court, administrative agency or governmental body (other than Lee County) or officer with jurisdiction in Lee County acting in its or his governmental capacity; including any exercise of the power of eminent domain, police power, condemnation or other taking by or on behalf of any public, quasi-public or private entity; excepting decisions interpreting federal, State and local tax laws; provided, however, that such order, injunction or judgment shall not arise in connection with or be related to the negligent or wrongful action or inaction of the

Party relying thereon and that neither the contesting in good faith of any such order, injunction, or judgment nor the reasonable failure to so contest shall constitute or be construed as wrongful or negligent action or inaction of such Party;

- (3) The suspension, termination, interruption, denial, failure to issue, modification, or failure of renewal of any permit, license, consent, authorization or approval necessary for the operation and maintenance of the Facility, if such act or event shall not arise in connection with or be related to the negligent or willful action or inaction of the Party relying thereon, and that neither the contesting in good faith of any such suspension, termination, interruption, denial, failure to issue, modification, or failure of renewal nor the reasonable failure to so contest shall constitute or be construed as a negligent or willful action or inaction of such Party; excluding, however, any license, consent or authorization for the technology of the Martin GMBH proprietary equipment, if applicable, which is required for the operation, repair or maintenance of the Facility;
- (4) The failure of any appropriate federal, State or local agency or public or private utility having operational jurisdiction in the area of location of the Facility site to provide and maintain in the necessary quantity and assure the maintenance of all utilities necessary for operation of the Facility or operation of the Landfill for reasons other than Lee County's failure to comply with agreements/tariffs associated with such utilities;
- (5) Any subsurface condition(s), with the exception of groundwater in any quantity as opposed to quality, which is discovered after the date of execution of this Agreement and which was unknown to Lee County and which could not have been discovered with reasonable diligence by Lee County on or before the execution of this Agreement, which prevents or affects operation of the Facility or requires a capital project to correct the adverse effect of such subsurface condition on the Facility;
- (6) The unavailability of the Landfill sufficient for disposal of all solid waste, including residue, from or otherwise intended to be delivered to, the Facility;
- (7) A physical constraint on the transmission system of FP&L that prevents FP&L from accepting energy deliveries from the Facility; (it being recognized that no other transmission constraints shall excuse either Party's performance hereunder).

The following acts, events, or conditions shall not qualify as a Force Majeure under this Agreement:

- (1) Any act, event or condition which is caused by the negligence, error, omission or intentional action of either Party, any ~~Seminole~~ affiliate, any subcontractor or

supplier to either Party, any of their affiliates or any other person relative to the performance of the Parties' respective obligations under this Agreement;

- (2) Any event, reasonably foreseeable on the date of execution of this Agreement;
- (3) Economic infeasibility, general economic conditions, interest or inflation rates, or currency fluctuations or exchange rates;
- (4) Labor strike, work stoppage or slowdown on the part of either Party's employees;
- (5) Changes in the financial condition of Seminole or Lee County or any subcontractor or supplier to the Parties affecting the performance of the respective obligations of the Parties under this Agreement;
- (6) Union or labor work rules, requirements or demands which have the effect of increasing the number of employees employed or otherwise increasing the cost to either Party under this Agreement;
- (7) Any act, event, circumstance or Change in Law occurring outside of the United States; and
- (8) Any Change in Law regarding a change in tax law, including any interpretation thereof.

"FP&L" means Florida Power and Light Company.

"Initial Period" means the period commencing on the Electric Power Delivery Date and expiring on December 31, 2010<sup>1</sup>. (Note to Lee County: Changed by JP 4/29/03)

"KW" means kilowatt.

"KWh" means kilowatt hour.

"Landfill" means the Lee County Landfill, or any other landfill(s) as Lee County may lease, own, operate or designate during the term of the Agreement, provided that the Lee County Landfill or any other landfill utilized by ~~the~~ Lee County shall always be permitted in accordance with all federal and State laws for the delivery of waste by or on behalf of ~~Lee~~ the County or the Facility operator.

"MW" means megawatt.

"MWh" means megawatt hour.

“Net Electric Capacity” means the average KW (net of on-site and other Lee County facility(ies) use) delivered by Lee County from the Facility to Seminole at the Delivery Point during Peak Performance Hours during a calendar month or such lesser period if such month is less than a calendar month.

“Net Electric Energy” means all electric energy (in MWh) generated by the Facility (net of on-site and other County facility(ies) use) and delivered by Lee County from the Facility to Seminole at the Delivery Point.

“Off-Peak Energy Hours” means the hours between 10:00 p.m. and 6:00 a.m., EPT, daily.

“Off-Peak Months” means the months of March, April, October and November.

“On-Peak Energy Hours” means the hours between 6:00 a.m. and 10:00 p.m., EPT, daily.

“On-Peak Months” means the months of January, February, May, June, July, August, September and December.

“Original Agreement” shall have the meaning set forth in the second Whereas clause of this Agreement.

“Peak Performance Hours” means (a) the hours between (1) 6:00 a.m. and 10:00 a.m. EPT, daily, and (2) 4:00 p.m. and 8:00 p.m., EPT, daily, during and between the months of November through April and (b) the hours between 2:00 p.m. and 10:00 p.m., EPT, daily, during and between the months of May through October.

“Proposed Expansion Project” means the expansion plan currently contemplated by Lee County that would, among other things, add a third boiler unit train and attendant electrical generation capacity which would increase the current capability of the Facility by an additional twenty (20) MW, such that the capability of the Facility would be increased to fifty nine (59) MW.

“RUS” means the Rural Utilities Service and its successor.

“Scheduled Maintenance Outage(s)” means those scheduled maintenance outages planned by Lee County each calendar year which shall not exceed, on a per boiler unit train basis (the Facility, as of the date of this Agreement, has two boiler unit trains and Lee County anticipates adding a third boiler unit train in conjunction with the Proposed Expansion Project), two outages each of no more than eleven (11) days in duration for each such outage. Three such outages shall be scheduled between March 15 and May 15 and three such outages shall be scheduled between October 15 and December 15. In addition to the six outages to coincide with periods specified herein, an outage period of fifteen (15) days shall be scheduled for turbine maintenance and overhaul during calendar year 2005~~6~~ and every fifth (5<sup>th</sup>) calendar year thereafter. Lee County shall exercise all reasonable efforts to schedule such turbine outages so

that the outage time periods do not overlap. In addition, Lee County shall exercise all reasonable efforts to schedule such turbine outages ~~to coincide~~ to coincide with a boiler unit train outage and in any event, between March 15 and May 15 or October 15 and December 15 of the applicable year. The Parties recognize and agree that this definition shall be adjusted, consistent with the outage allowance for each boiler unit train as prescribed herein, to accommodate Additional Facility Capacity.

“Section” means a section of this Agreement.

“Subsequent Period” shall have the meaning set forth in Section 3.2.3 of this Agreement.

“State” shall have the meaning set forth in initial paragraph of this Agreement.

“System” shall have the meaning set forth in Section 18 of this Agreement.

## **SECTION 2** **TERM**

Unless sooner terminated in accordance with its terms, this Agreement shall expire at midnight, December 31, 2020.

## **SECTION 3** **TERMS OF PURCHASE AND SALE**

3.1 General Obligations. Unless sooner terminated in accordance with this Agreement, Lee County shall, commencing on the Electric Power Delivery Date, (a) for the term of this Agreement, sell and deliver to the Delivery Point and Seminole agrees to purchase, receive and accept at the Energy Price specified in Section 4, the Net Electric Energy and (b) for the period(s) during the term of this Agreement in which a capacity payment arrangement is made between the Parties pursuant to Section 3.2, sell and deliver and Seminole agrees to purchase, receive and accept at the applicable Capacity Price specified in Section 4, the Net Electric Capacity.

3.2 Capacity Payment Periods.

3.2.1 Seminole shall make capacity payments to Lee County for the delivery of Net Electric Capacity to Seminole for the Initial Period at the Capacity Price specified in Section 4, and such obligations of the Parties shall continue after the Initial Period unless and until such time as (a) Seminole, upon at least ~~three (3)~~ two years prior written notice to Lee County, shall (1) terminate such capacity payment obligation or (2) propose to renegotiate the Capacity Price or (b) Lee County, upon at least ~~three (3)~~ two years prior written notice to Seminole shall (1) terminate this Agreement or (2) propose to renegotiate the Capacity Price. Any successful renegotiation of the Capacity Price pursuant to this Section 3.2.1 shall result in a new commitment which shall have a minimum period of three years, commence immediately

following the expiration of the application of such initial Capacity Price and shall be based on the then current economic conditions applicable to Seminole and Lee County.

3.2.2 Renegotiations of a Capacity Price per Section 3.2.1 shall be conducted in good faith and shall commence promptly after one Party's notice to the other pursuant to Section 3.2.1. If the Parties are unable to renegotiate a mutually agreeable Capacity Price for Net Electric Capacity and execute an amendment to this Agreement relative to the same at least twenty foureighteen (2418) months prior to the expiration of the application of the initial Capacity Price, then Lee County may, upon twenty fourlve (2412) months prior written notice to Seminole (and in no event prior to the end of the Initial Period), terminate this Agreement in its entirety with no liability or obligation to Seminole other than any liability or obligation specifically recognized herein and arising prior to the termination date.

3.2.3 For any period after the period for which a new Capacity Price was negotiated resulting in an executed amendment to this Agreement as described above in this Section 3 (the "Subsequent Period"), the procedures, time frames, terms and conditions applicable for terminating capacity payments or renegotiating any subsequent Capacity Price shall be those specified in Sections 3.2.1 and 3.2.2 as if any such Subsequent Period was the Initial Period, as such Initial Period pricing may be continued above.

3.2.4 If at any time during the term of this Agreement Seminole is not obligated to make capacity payments to Lee County pursuant to this Section 3, then Lee County may, upon six months prior written notice to Seminole, terminate this Agreement in its entirety with no liability or obligation to Seminole other than any liability or obligation specifically recognized herein and arising prior to the termination date.

3.2.5 During the Initial Period, ~~Lee~~ Lee County covenants that it will not utilize any electric power generated by the Facility for use or consumption by any Lee County facility, other than the Facility and any other related Lee County facility located on-site.

## **SECTION 4**

### **CAPACITY AND ENERGY PRICE**

#### **4.1 Capacity and Energy Price and Payment.**

4.1.1 Monthly Capacity Payment. The monthly capacity payment amount shall be calculated by multiplying the Capacity Price for the applicable month by the calculated Net Electric Capacity for such month. An example of the monthly capacity payment calculation is described in Appendix ~~2~~1.

#### **4.1.2 Capacity Price.**

4.1.2.1 During the Initial Period as the pricing during such period may be continued thereafter as recognized in Section 3.2.1 ("Capacity Payment Term"), Seminole shall



pay Lee County each month a Capacity Price of (a) ~~[\$5.00xx.xx]~~ per kW month for Net Electric Capacity in On-Peak Months and (b) ~~[\$5.00xx.xx]~~ per kW month for Net Electric Capacity in Off-Peak Months. [The Capacity Price for Net Electric Capacity shall escalate at one percent (1%) each calendar year, with the first adjustment to take place on January 1, 2005, and continuing each January 1, throughout the Capacity Payment Term ~~Term~~ of the Agreement. The Capacity Payments, as escalated, are set forth on Appendix ~~3~~2.]

4.1.2.2 Notwithstanding anything to the contrary set forth in this Agreement, Seminole shall not have an obligation to pay Lee County Capacity Payments for Net Electrical Capacity attributable to the Proposed Expansion Project, until the later of January 1, 2006 or the commercial operations date thereof.

4.1.2.3 For periods after the Initial Period, the Capacity Price shall be determined pursuant to Section 3.

#### 4.1.3 Energy Price

4.1.3.1 Seminole shall pay Lee County each month an Energy Price of (a) ~~[\$28.76Current]~~ per MWh during On-Peak Energy Hours and (b) an Energy Price of ~~[\$Current]~~\$17.48 per MWh during Off-Peak Energy Hours. The Energy Price shall be adjusted pursuant to Section 4.1.3.2.

4.1.3.2 The Energy Price shall be adjusted monthly utilizing Seminole's rolling twelve (12) month average system fuel cost as an index. The monthly Energy Price shall be adjusted in direct proportion to the change in such index. An example of the calculation of the monthly Energy Price adjustment is described in Appendix ~~3~~3.

4.1.3.3 Prior to the last day of each calendar month, Seminole shall provide to Lee County its twelve (12) month rolling fuel cost information as necessary for Energy Price adjustments for the current month. The utilization of this information by Lee County for invoicing purposes is further described in Appendix ~~3~~3.

4.1.3.4 Notwithstanding anything to the contrary set forth in this Agreement, Seminole shall pay Lee County the Energy Price for all Net Electrical Energy delivered from the Facility, including Net Electrical Energy attributable to the Proposed Expansion Project, regardless of when such energy is delivered (*i.e.*, whether prior to January 1, 2006 or otherwise).

## **SECTION 5** **SCHEDULED MAINTENANCE**

5.1 Coordination. Lee County shall exercise all reasonable efforts to coordinate Scheduled Maintenance Outages with Seminole to avoid, where reasonably possible, overlap

with Seminole's planned outages of its large generating units. Seminole's normal planned maintenance outages occur during the following intervals:

Spring Season: March 15 through May 15  
Fall Season: October 15 through December 15

5.2 Exclusion From Capacity Payment Calculation. Scheduled Maintenance Outages of each boiler unit train shall be excluded from the calculation of monthly capacity payments pursuant to Section 4.1.1. An example of the calculation of the monthly capacity payments during a Scheduled Maintenance Outage is demonstrated in Appendix 21.

## **SECTION 6** **EMERGENCY CONDITION**

During special circumstances where Seminole, or other competent authority responsible for regional reliability, determines that a generating capacity shortage may reasonably occur, Lee County shall, to the extent reasonably feasible and in recognition of the operational constraints of the solid waste fueled Facility and the limitations and requirements provided in Lee County's contract with the Facility operator, coordinate with Seminole to maximize the availability of the Facility for electrical generation during any such capacity shortage on Seminole's system; provided, however, in no event shall Seminole have or assume any authority or control of any nature over the Facility and its operations, nor shall the Facility be subject to dispatch.

## **SECTION 7** **FACILITY EXPANSION**

Should Lee County decide to expand the Facility's solid waste throughput and attendant electrical generation capacity in excess of that contemplated by the Proposed Expansion Project, during the term of this Agreement, the Net Electrical Capacity and Net Electric Energy shall be increased and the Scheduled Maintenance Outage definition shall be adjusted, accordingly, in recognition of such Additional Facility Capacity, and the otherwise applicable provisions of this Agreement shall remain the same and binding on the Parties in accordance with their terms. Lee County shall provide Seminole (a) two years' prior written notice of its intent to increase the Net Electric Capacity and attendant Net Electric Energy and (b) at least three months' prior written notice of the commencement of start-up and shakedown of the installed Additional Facility Capacity as well as the anticipated commercial operations date of such Additional Facility Capacity. Such Additional Facility Capacity shall not, without Seminole's prior written consent, serve to increase the Net Electric Capacity and attendant Net Electric Energy by more than twenty (20) MWs as measured on a consistent basis against the Net Electric Capacity and the Net Electric Energy in the last full calendar year immediately preceding the date of the commencement of the delivery of such increased Net Electric Capacity and Net Electric Energy. Notwithstanding anything to the contrary set forth in this Agreement, Seminole shall not have an obligation to pay Lee County Capacity Payments for Net Electric Capacity attributable to the

Additional Facility Capacity until the later of January 1, 2006, or the commercial operation date thereof.

## **SECTION 8** **METERING**

8.1 Meter Calibration. Unless the Parties otherwise agree, the metering for determining electric energy deliveries to Seminole shall be the meters utilized by FP&L and Lee County at the Delivery Point as of the date of this Agreement. Lee County shall, at its cost and expense, be responsible for meter calibration at least once per year. For purposes of the immediately preceding sentence, FP&L's routine calibration of such meters shall suffice for purposes of this Agreement. Seminole reserves the right to require that Lee County instruct FP&L to calibrate the meters at other times. Should such additional recalibration of FP&L's meters demonstrate that they are within generally accepted tolerance parameters for revenue class metering (Note to Lee County: Seminole wants to insert specifics from FPL's interconnection agreement with Lee County), then the costs and expenses of such recalibration(s) shall be borne by Seminole. If such additional recalibration(s) demonstrates that the meters are not within such generally accepted tolerance parameters, then the costs and expenses of such recalibration(s) shall be borne by Lee County.

8.2 Change of Delivery Locations. If Seminole proposes in writing to change the Delivery Point, the Parties shall enter into good faith negotiations to amend the Agreement and designate a new delivery point, provided that, Lee County will determine whether it is reasonably able to make all necessary and acceptable arrangements (in Lee County's sole discretion) to deliver the Net Electrical Energy to any other delivery point(s), and Seminole is responsible to pay (or reimburses Lee County) for all the costs and expenses in any manner associated with such change.

## **SECTION 9** **SEMINOLE EQUIPMENT**

Seminole shall have the right, at its sole cost and expense, to install system control and data acquisition and communications equipment on-site to enable Seminole to monitor critical Facility information for purposes of managing Seminole's power supply resources; provided, however, Lee County shall have the right to approve such equipment and such installation location on-site, which such approval rights shall not be unreasonably withheld or delayed by ~~the~~ Lee County. Seminole's right and purpose for such installation shall not be interpreted or construed as providing Seminole with any control or authority over the Facility, its operations and electrical generation, nor shall Seminole have any right or authority to subject the Facility to dispatch.

## **SECTION 10** **PAYMENT TERMS**

10.1 Rendering of Invoice; Payment. Lee County shall prepare and forward an invoice each month to Seminole as soon as reasonably practicable after the end of each month. Each such invoice shall be due and payable by Seminole within fifteen (15) business days after Seminole's receipt of such invoice. The payment date to Lee County shall be the postmark date of payment from Seminole.

10.2 Invoice Disputes. In the event of a bona fide dispute about the correctness of an invoice, Seminole shall pay the undisputed amount in accordance with Section 10.1. Additional amounts owed by Seminole or refunds due Seminole upon resolution of the billing dispute shall accrue interest at the prime rate as published by the Wall Street Journal on the first business day of the month in which the invoice was rendered.

## **SECTION 11** **REGULATION SERVICE**

Regulation service, if (as) necessary to meet Lee County's obligations under its Interconnection Agreement with FP&L dated October 29, 1992, shall be at Lee County's cost and expense. If the Parties determine that the provisions of regulation service by Seminole is more cost effective to Lee County and the Parties further determine that Lee County has the option to secure regulation service from Seminole, then the Parties agree to promptly enter into good faith negotiations by way of a separate agreement for the provision of regulation service by Seminole to Lee County. (Note to Lee County – should we amend the current agreement for regulation service or insert the necessary language here?)

## **SECTION 12** **CONDITION PRECEDENT AND** **ESTABLISHMENT OF ELECTRIC POWER DELIVERY DATE**

(Note to Lee County – Section 12 was amended for RUS Approval only and re-inserted, but is not displayed in redline format).

12.1 Conditions Precedent. The obligations of the Parties set forth in Section 3.1 shall be conditioned on the satisfaction or waiver by Seminole of the following conditions precedent:

12.1.1 Seminole's receipt of approval of this Agreement from the RUS.

12.2 Due Diligence. On and after the date of the execution of this Agreement, Seminole shall, at its sole cost and expense, make prompt applications to the Administrator of the RUS and proceed with all due diligence to obtain the approval of the Administrator of the RUS described in Section 12.1.1.

12.3 Failure to Secure RUS Approval. Within five (5) days after the satisfaction or waiver by Seminole of the conditions precedent specified in Section 12.1.1, Seminole shall give Lee County written notice of such satisfaction or waiver. If such written notice is not provided to Lee County on or before November 30, 2003, then either Party may terminate this Agreement

by giving written notice to the other. In such event, neither Party shall have any liability to the other and each Party shall be responsible for the costs and expenses incurred by it relative to the negotiations, execution and pursuit of this Agreement.

12.4 Agreement Modification by RUS. If approval by the Administrator of the RUS is conditioned or requires modification to this Agreement, the effect of which results in an adverse effect on either Party, such adversely affected Party shall have the right to seek to negotiate with the other Party for relief necessary to alleviate said adverse effects caused by such condition(s) and/or modification(s) so imposed. While the unaffected Party shall be required to negotiate in good faith in an attempt to agree upon amendments which restore the original balance of consideration contained in this Agreement as originally executed, such unaffected Party shall be under no compulsion to make any amendment to this Agreement that is materially adverse to its interest.

### **SECTION 13**

#### **OPERATIONS AND ADMINISTRATION**

13.1 Operations Schedule. After the Electric Power Delivery Date and prior to October ~~11~~ of each calendar year of this Agreement, Seminole shall provide Lee County its planned outage schedule for the following calendar year. By November 30, Lee County shall provide to Seminole, in writing, its planned Scheduled Maintenance Outages for such calendar year, the expected operation of the Facility for the immediately succeeding calendar year, and a good faith estimate of the amount of electricity to be generated by the Facility and delivered to Seminole each month of such calendar year. Should a significant change to such estimates or schedules occur, the Party incurring the change shall provide prompt written notice to the other Party.

13.2 Monthly Operations. After the Electric Power Delivery Date and prior to the twenty-eighth (~~28th~~<sup>x<sup>2</sup></sup>) day of each calendar month, Lee County shall provide to Seminole, in writing, a good faith estimate of the Facility's expected operation and electrical generation for each day of the immediately succeeding calendar month. Should it come to Lee County's attention that there will be a significant change to such estimates, Lee County shall promptly notify Seminole of such change(s) in writing.

13.3 Daily Operations. After the Electric Power Delivery Date, Lee County shall provide, by fax transmission or other mutually agreeable method, to Seminole each day, by 9:00 a.m., EPT, its good faith estimate of the Facility's electrical generation on an hourly basis for the following day. Should it come to Lee County's attention that there will be a significant change to such estimates, Lee County shall promptly notify Seminole of such change(s) in writing.

### **SECTION 14**

#### **AUDITS**

Lee County shall have the right, upon reasonable notice and during normal business hours, to audit relevant information utilized by Seminole to calculate the index that adjusts the Energy Price in Section 4.1.3.2. Lee County solely to determine the correctness of the index and the index, and may be used by Lee County to the Energy Price. Seminole shall have the right, upon reasonable notice and during normal business hours, to audit relevant information and related information which relates to Lee County's meeting of its obligations under this Agreement to sell and deliver Net Electric Capacity and Net Electric Energy to Seminole or which relates to the invoices rendered under Section 10.1 of this Agreement.

**SECTION 15  
FORCE MAJEURE**

15.1 Relief and Notice. If either Party hereto should be delayed in or prevented from performing or carrying out any of the agreements, covenants, and obligations made by and

imposed upon said Party by this Agreement, by reason of or through Force Majeure, then in such case or cases, the affected Party shall be excused without cost or liability to the other (including consequential damages or cost of replacement power), for failure or delay in performance of any obligation set forth in the Agreement during the occurrence, continuance and resulting impact of the Force Majeure event, except the obligation to pay money when due, and in the event of a delay, all times of performance shall be extended by a period equal to the time lost solely by reason of such delay, except that this Agreement shall not be extended beyond the expiration of the term of this Agreement as provided in Section 2. The affected Party shall give notice to the other Party in writing of the Force Majeure within fifteen (15) days from the date the affected Party becomes aware of the Force Majeure event. For purposes of the immediately preceding sentence, the Parties recognize and agree that the occurrence of various acts, events or circumstances relating to changes in administrative or judicial laws, rules or regulations ("Change(s) in Law") may or may not, at the time of its or their occurrence, qualify as a Force Majeure. The Parties further recognize and agree that with respect to certain Changes in Law, the occurrence of a Force Majeure may not be recognized to have occurred until after a period of time has elapsed. Accordingly, the Parties agree and intend that the application of the word "aware" and the fifteen (15) day notice period requirement specified above take these

recognition's into account. In any event, the failure to give such notice shall not prevent the affected Party from claiming Force Majeure, but shall entitle the other Party to such remedy as may be available at law or in equity (except termination of this Agreement) as a result of such failure to the extent of any actual prejudice.

15.2 Effect on Capacity Payments. The period comprising the occurrence and continuance of a Force Majeure event shall be included in the calculation of monthly capacity

payments for purposes of Section 4.1.1. (*i.e.*, Force Majeure events shall be treated like forced outage events wherein unavailability of the Facility reduces the Net Electric Capacity that is produced and measured in the Peak Performance Hours).

15.3 Force Majeure Termination. If the occurrence and continuance of a Force Majeure event extends, or is reasonably expected to extend, beyond twelve (12) continuous months or longer, either Party shall have the right to terminate this Agreement upon thirty (30) days' prior written notice to the other Party with no further liability to such other Party subject to Section 21.

## **SECTION 16**

### **DEFAULT AND TERMINATION**

16.1 Defaults. A default exists under this Agreement if any one of the following events occurs:

- (a) Failure of Seminole to make capacity and/or energy payments to Lee County when due.
- (b) Lee County negligently fails to generate ~~and~~ (Note to Lee County - nice try!) deliver to Seminole ~~and~~ electric power from the Facility for fourteen (14) consecutive days.
- (c) Either Party breaches any material term or condition of this Agreement not enumerated or described in Section 16.1 (a) or (b).
- (d) Either Party appoints a receiver or liquidator or trustee for the Party or any property of a Party, and such receiver, liquidator or Trustee is not discharged within sixty (60) days.
- (e) The entry of a decree adjudicating a Party or any substantial part of the property of a Party- bankrupt or insolvent, and such decree is continued undischarged and unstayed for a period of sixty (60) days.
- (f) The filing of a voluntary petition in bankruptcy under any provision of any federal or State bankruptcy law by a Party.

16.2 Cures. Upon the occurrence of a default specified in Section 16.1(a), (b) or (c), the Party not in default may give written notice of the default to the defaulting Party. Such notice shall set forth, in reasonable detail, the nature of the default and, where known and applicable, the steps necessary to cure such default. Except with respect to a payment default, the defaulting Party shall have thirty (30) days following receipt of such notice either to (a) cure such default or (b) commence in good faith all such steps as are reasonable and appropriate to cure such default in the event such default cannot, in the reasonable judgment of such non-defaulting Party, be completely cured within such thirty (30) day period. A payment default shall be cured within ten (10) days after written notice from the Party not in default ~~to the defaulting Party~~.

16.3 Termination. In addition to the other acts, events, conditions or omissions for which this Agreement expressly recognizes the right of a Party or Parties to terminate this Agreement, this Agreement may be terminated by the applicable Party under the following conditions or circumstances:

(a) If the defaulting Party pursuant to Sections 16.1(a), (b) or (c) fails to cure such default or take such steps to cure such default as provided in Section 16.2, this Agreement may be terminated by written notice by the non-defaulting Party to the Party in default. This Agreement shall thereupon terminate and the non-defaulting Party may exercise all such rights and remedies as may be lawfully available to it to recover damages, subject to any limitations specifically set forth in this Agreement.

(b) This Agreement may be terminated for a default specified in Section 16.1(d), (e) or (f) by written notice from the non-defaulting Party to the Party in default. This Agreement shall thereupon terminate and the non-defaulting Party may exercise all such rights and remedies as may be lawfully available to it to recover damages, subject to any limitations specifically set forth in this Agreement.

(c) Notwithstanding Sections 15.3 or 16.1(b) or (c), if a regulatory agency, governmental authority or court having appropriate jurisdiction to impose environmental constraints or requirements on the Facility more burdensome than those in effect on the date of the execution of this Agreement, such that Lee County determines, in its sole discretion, that it is uneconomical to continue to operate or cause to be operated the Facility, Lee County may terminate this Agreement upon six months' prior written notice to Seminole. Under such circumstances, Lee County shall have no liability to Seminole subject to Section 21 of this Agreement.

## **SECTION 17** **INDEMNIFICATION AND LIABILITY**

17.1 Indemnification. Neither Seminole nor Lee County shall be responsible to each other in tort (including negligence and strict liability), contract or otherwise for any loss, costs or damage of any kind which may result from or be caused by interruptions in service or deficiencies in service under this Agreement except as specifically provided otherwise in this Agreement. Seminole and Lee County, subject to the limitations as set out in Florida law, expressly agree to indemnify, hold harmless and defend the other against all claims, liability, costs or expense for loss, damage or injury to persons or property in any manner directly or indirectly connected with or growing out of the generation, transmission or distribution of electric energy on its own side of the Delivery Point hereunder, unless due to its own negligence or willful misconduct. Nothing herein shall create, or be interpreted as creating, any standard of care with reference to, or any duty or liability to any third person or party.

17.2 Limitation of Liability. LEE COUNTY AND SEMINOLE ACKNOWLEDGE AND AGREE THAT BECAUSE OF THE UNIQUE NATURE OF THE UNDERTAKINGS



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CONTEMPLATED BY THIS AGREEMENT, IT IS DIFFICULT OR IMPOSSIBLE TO DETERMINE WITH PRECISION THE AMOUNT OF DAMAGES THAT WOULD OR MIGHT BE INCURRED BY LEE COUNTY OR SEMINOLE AS A RESULT OF A BREACH OF THIS AGREEMENT BY LEE COUNTY OR SEMINOLE. (Note to Lee County – Seminole desires clarification on the necessity of this provision. It appears to us this language contemplates or was part of a passage on Liquidated Damages, a concept not used in this agreement.) IN NO EVENT, HOWEVER, SHALL LEE COUNTY OR SEMINOLE BE LIABLE FOR OR OBLIGATED IN ANY MANNER, EXCEPT TO THE EXTENT OF INDEMNIFICATION PURSUANT TO SECTION 17.1, TO PAY INCIDENTAL, SPECIAL, PUNITIVE, CONSEQUENTIAL OR INDIRECT DAMAGES OF ANY NATURE TO THE OTHER PARTY BECAUSE OF A BREACH OF THIS AGREEMENT (INCLUDING ACTS OF NEGLIGENCE, OMISSIONS OR STRICT LIABILITY), WARRANTY, DELAY OR OTHERWISE, ARISING OUT OF THE PERFORMANCE OR NONPERFORMANCE BY LEE COUNTY OR SEMINOLE OF ~~ITSTHEIR~~ OBLIGATIONS UNDER THIS AGREEMENT, INCURRED BY IT WHETHER OCCURRING DURING OR SUBSEQUENT TO THE PERFORMANCE OF THIS AGREEMENT.

#### **SECTION 18**

#### **SOURCE OF FUNDS**

Notwithstanding anything to the contrary contained in this Agreement, any payments or monetary obligations, if any, of any kind or nature whatsoever that may at any time be due and owing to the Seminole pursuant to the terms of, or resulting from, this Agreement are intended by the Parties to and shall be strictly limited to and payable solely out of revenues derived from Lee County Solid Waste System Funds, from the Lee County Solid Waste System (the "System") and shall not be payable from any other source. No such payment shall be, or be deemed to be, a debt of Lee County under any circumstances or for any purpose whatsoever, nor shall this Agreement constitute a pledge of the full faith and credit of Lee County, nor shall Lee County be required to appropriate funds to pay for any amounts due under this Agreement. Seminole will never have the right to compel the exercise of any taxing power of Lee County to pay any amount due to Seminole under this Agreement. Seminole shall have no recourse for payment hereunder against any other source of funds, and Seminole hereby irrevocably and unconditionally waives any recourse or claim it may have or could otherwise have or allege to have against any other payment source other than the System. Lee County agrees to continue to operate and maintain the System, pursuant to the terms and conditions as set out herein, which shall receive all revenues which shall be responsible for payment, solely from such funds, of all amounts due Seminole under this Agreement.

#### **SECTION 19**

#### **SUCCESSORS AND ASSIGNS**

This Agreement shall inure to the benefit of, and be binding upon, Lee County and Seminole and their respective successors and assigns, but shall not be assignable by either Party without the prior written consent of the other Party, which consent shall not be unreasonably

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withheld or delayed provided, however, any purported assignment absent such prior written consent shall be void, and provided, further that (a) Lee County may, without Seminole's consent, assign (1) its interest in the Facility, this Agreement, or both, as the case may be, to the trustee under the trust indenture pursuant to which bonds are issued to finance the Facility and (2) this Agreement to a validly constituted agency or authority of the State or a duly created municipal corporation or authority and (b) Seminole may, without Lee County's consent, assign ~~(1)~~ its interests in this Agreement to a successor in ownership or operation of properties by reason of a merger, consolidation, reorganization, sale or foreclosure, where substantially all of Seminole's assets and other properties are acquired by such successor. Notwithstanding any other provision of this Section, Seminole's interest in this Agreement may be assigned, transferred, mortgaged or pledged by it without the other Party's consent for the purpose of creating a security interest for the benefit of the United States of America, acting through the RUS (and thereafter RUS, without the approval of the non-assigning Party, may cause the RUS's interest in this Agreement to be sold, signed, transferred or otherwise disposed of to a third party). ~~and (2) for security purposes, including the assignment, transfer, mortgage or pledge to create a security interest for the benefit of the RUS.~~

**SECTION 20**  
**NOTICES**

~~[UPDATE INFORMATION]~~ All notices provided pursuant to this Agreement shall be in writing and addressed to the following persons. The information below may be modified by providing the other Party thirty (30) days' advance written notification thereof:

If to Seminole:

Vice President, Strategic Services  
Seminole Electric Cooperative, Inc.  
P. O. Box 272000  
Tampa, FL 33688-2000

Director of Operations  
Seminole Electric Cooperative, Inc.  
P. O. Box 272-000  
Tampa, FL 33688-2000

If to Lee County:

Director  
Lee County Solid Waste Division  
10500 Buckingham Rd.  
Fort Myers, FL 33905  
Phone: 239-338-3302  
Fax: 239-461-5871

**SECTION 21**  
**TERMINATION RESOLUTION**

The applicable provisions of this Agreement shall continue in effect after termination thereof to the extent necessary to provide for final billing, billing adjustments and payments with respect to any obligation to indemnify a Party with regard to a covered claim associated with or arising out of events that occurred prior to the termination of this Agreement.

**SECTION 22**  
**DISPUTE RESOLUTION**

In the event of any dispute, controversy or claim between the Parties arising out of or relating to this Agreement, or the breach, termination or invalidity thereof (collectively, a "Dispute"), the Parties shall attempt in the first instance to resolve such Dispute through good faith consultations and discussions between the Parties. Subject to the foregoing, if any Dispute cannot be so resolved, either Party may commence an action in a State court of competent jurisdiction ~~in Lee County~~, exclusive of any other forum that may have jurisdiction over the matter. The Parties agree to attempt to resolve all Disputes arising hereunder promptly, equitably and in a good faith manner. The Parties further agree to provide each other with reasonable access during normal business hours to any and all non-privileged records, information and data pertaining to such Dispute.

**SECTION 23**  
**ENTIRE AGREEMENT**

The provisions of this Agreement, including present and all future Appendices shall (a) constitute the entire agreement between the Parties and supersedes any negotiation, proposal or agreement, written or oral, prior to the date of this Agreement, there being no agreements or understandings other than those written or specified herein, and (b) unless otherwise specifically recognized in this Agreement, shall not be modified or amended except by written agreement duly entered into and executed by the Parties with the same formality as this Agreement.

**SECTION 24**  
**HEADINGS**

Captions and headings ~~and the Table of Contents~~ in this Agreement are for ease of reference only and do not constitute a part of this Agreement.

**SECTION 25**  
**COUNTERPARTS**

This Agreement may be executed in more than one counterpart, each of which shall be deemed to be an original.

## **SECTION 26** **COVENANT**

Each Party warrants and represents that it has the legal and, as applicable, corporate and municipal authority to execute this Agreement and to perform all of its obligations hereunder.

## **SECTION 27** **SURVIVAL**

Sections 10.1, 17, 18, 21 and 22 shall survive the termination or expiration of this Agreement.

## **SECTION 28** **RENEWABLE CREDITS**

~~THE FOLLOWING PARAGRAPH WAS PROPOSED BY SEMINOLE~~...In the event that Lee County has received formal regulatory approval that the Facility meets the criteria and qualifications necessary to be classified as a renewable resource for Seminole, and Seminole determines, at its sole discretion, that it desires to retain such associated renewable credits during the ~~t~~Term of this Agreement, Seminole shall pay Lee County a premium of \$2,700 kW/mo. ~~t~~o the Capacity Price (as escalated from the next applicable calendar year) and receive any renewable credits or benefits during the ~~t~~Term of this Agreement. Seminole shall have sixty (60) days to strike upon this option, upon receipt of written notice from Lee County that the Facility has received formal regulatory approval that it meets the criteria and qualifications necessary to be classified as a renewable resource for Seminole. In the event Seminole accepts the option, the premium payment will take effect sixty (60) days after receipt of written notice from Lee County described above. Seminole may strike on the option for a period of no less than twenty-four (24) months and may terminate payment of the option premium at any time after the initial twenty four (24) months with ninety (90) days written notice to Lee County. If Seminole declines this option, Lee County will retain all associated credits and tax benefits with the status of the Facility as a renewable resource, while Seminole will continue to take Net Electric Capacity and Net Electric Energy from the Facility per this Agreement.}

~~AS AN ALTERNATIVE TO THE FOREGOING PARAGRAPH, LEE COUNTY MAY WANT TO CONSIDER CONCEPTS SIMILAR TO THOSE OUTLINED IN THE FOLLOWING PARAGRAPHS:...~~

~~— [Notwithstanding anything to the contrary set forth in this Agreement, the terms Net Electrical Energy and Net Electrical Capacity do not include, and Lee County specifically retains and shall have the sole right to claim, any attributes related thereto, including without limitation, Emission Benefits (as defined below), renewable energy credits, tax benefits, certificates, registrations, and similar and related items (collectively, "Benefits").~~

**SECTION 28**  
**RENEWABLE CREDITS OPTION**

In the event that Lee County receives formal regulatory approval that the Facility meets the criteria and qualifications necessary to be classified as a renewable resource for Seminole and is eligible to receive renewable resource credits (“Renewable Resource Credits”), then Lee County shall give written notice to Seminole which shall include copies of all documents reflecting such approval. Upon receipt of such notice, and applicable documents, Seminole shall have sixty (60) days in which to determine, in its sole discretion, to exercise its option to receive such Renewable Resource Credits.

In the event that Seminole elects to exercise said option, then Seminole shall give written notice to Lee County within said sixty (60) day period, and shall pay to Lee County a Renewable Resource Credits premium of \$2.70 kW/mo (the “Renewable Resource Credits Premium”) which shall be added to the Capacity Price beginning the month following Seminole’s exercise of the option. The Renewable Resource Credits Premium will continue to be paid for a minimum term of twenty-four (24) months, and shall be escalated in the same manner as the Capacity Price. Seminole shall have the right to terminate its right to receive the Renewable Resource Credits, on or after the minimum term of twenty-four (24) months, by giving ninety (90) days prior written notice to Lee County of such termination. Upon the effective date of such termination, Seminole shall no longer be obligated to pay the Renewable Resource Credits Premium, and thereafter Lee County shall have all rights to the Renewable Resource Credits.

In the event that Seminole does not elect to exercise its option, then Lee County shall retain all applicable Renewable Resource Credits.

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~~In the event that Lee County determines, in its sole discretion that it desires to sell any Benefits, Lee County shall deliver to Seminole a written notice stating such determination and specifying the Benefits to be sold, and for a period of sixty (60) days after Seminole's receipt of such notice, Lee County and Seminole shall negotiate in good faith with respect to the sale by Lee County to Seminole of the Benefits specified in such notice. If Lee County and Seminole, negotiating in good faith, have reached an agreement in principle regarding the purchase and sale of the specified Benefits, the parties shall use commercially reasonable efforts to proceed to the closing of the purchase and sale of such Benefits in accordance with such agreement in principle. If, after the expiration of such (60) sixty-day period Lee County and Seminole, negotiating in good faith, have not reached an agreement in principle regarding the purchase and sale of the specified Benefits, or upon earlier receipt by Lee County of a written notice from Seminole stating that Seminole is not interested in pursuing negotiations with Lee County as to the purchase of the specified Benefits, Lee County shall have no further obligation to Seminole with respect to the right of first offer granted hereby.~~

~~————“Emissions Benefits” means any value of emission reduction credits, emission allowances, offsets or similar instruments that arise or are allocable to the collection, production, sale, destruction or use of Landfill resources or the generation of electric or other forms of energy or capacity therefrom at the Facility or the Landfill, including without limitation credits, allowances, offsets and other instruments resulting from the registration of methane emission reductions with Florida or federal regulatory entities.]~~

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the date first set forth above.

ATTEST: CHARLIE GREEN

LEE COUNTY, FLORIDA

\_\_\_\_\_  
Deputy Clerk

By: \_\_\_\_\_  
Name:  
Title:

ATTEST:

SEMINOLE ELECTRIC COOPERATIVE, INC.

By: \_\_\_\_\_  
Name:  
Title:

APPROVED AS TO LEGAL FORM  
AND CONTENT

APPROVED AS TO LEGAL FORM  
AND CONTENT

OFFICE OF THE LEE COUNTY  
ATTORNEY

COUNSEL TO SEMINOLE ELECTRIC  
COOPERATIVE, INC.

911125 03

### Appendix 13 - Energy Price Adjustment

#### General

The Energy Prices described in Section 4 will be adjusted monthly (up or down) to reflect changes in Seminole's twelve (12) month rolling average fuel cost. Seminole's twelve (12) month rolling average fuel cost is the rolling twelve (12) month average fuel expense in \$ per MWh for all of Seminole's generating resources used to serve native load customers (*i.e.*, excluding off-system sales). Seminole's generating resources shall include owned, leased and purchased power resources.

Due to the existence of a time lag in Seminole's accumulation of fuel costs for a portion of its generating resources, the twelve (12) month rolling average fuel cost applicable for adjusting Energy Prices in any current month will be over the twelve (12) month period ending two months prior to the current month.

A Monthly Energy Cost Adjustment is calculated by dividing the Current Fuel Cost (*i.e.*, the twelve (12) month rolling average fuel cost ending two months prior to the current billing month) by the Base Fuel Cost. The Base Fuel Cost is the twelve (12) month rolling average fuel cost ending three months prior to the current month.

#### Example

~~{THIS EXAMPLE SHOULD BE REVISED TO INCLUDE ACTUAL NUMBERS FROM RECENT PERIODS}~~

Assume for the purposes of this example that, in ~~April 2003~~~~December 1999~~, the price for On-Peak Energy was ~~\$283.7600~~ per MWh and the price for Off-Peak Energy was ~~\$147.4800~~ per MWh. For energy delivered in ~~May~~~~January 2000~~~~3~~, an adjustment would be applied to reflect changes in Seminole's average system costs as represented by the twelve (12) month rolling fuel cost index. Seminole's Current Fuel Cost equals ~~\$250.9410~~ per MWh (*i.e.*, twelve (12) month period ending ~~February~~~~October 2003~~~~1999~~). The Base Fuel Cost equals ~~\$250.7300~~ per MWh (*i.e.*, twelve (12) month period ending ~~January 2003~~~~September 1999~~). The Monthly Energy Cost Adjustment is calculated as follows:

$$\text{Current Fuel Cost} / \text{Base Fuel Cost} = \$205.9410 / \$250.0073 = 1.0058$$

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To calculate the new ~~May~~February Energy Prices, the prior month's prices for On-Peak Energy and Off-Peak Energy are multiplied by 1.0058, yielding "adjusted" prices of \$283.4299 per MWh and \$147.0762 per MWh, respectively. This adjustment is repeated for each calendar month during the term of this Agreement, yielding monthly adjustments of On-Peak and Off-Peak Energy Prices which track changes in Seminole's average system fuel cost.



## Appendix 21 - Monthly Capacity Payment Calculation

### General

During any calendar month, the Monthly Capacity Payment is calculated by applying the appropriate seasonal Capacity Price to Lee County's Net Electric Capacity.

### Example

During July 2003, there are 248 Peak Performance Hours (*i.e.*,  $31 \times 8 = 248$ ). Assume for the purposes of this example that, during those specific hours in July, Lee County generated 7936 MWh in total. Lee County's Net Electric Capacity would be calculated to be 32.00 MW (*i.e.*,  $7936 \text{ MWh} / 248 \text{ hours}$ ). Therefore, Seminole's Monthly Capacity Payment would be ~~[\$160,000,XXX,XXX]~~ (*i.e.*,  $32,000 \text{ kW} \times \{\$xx5.xx00\}$  per kW-mo.).

During November 2003, there is a Scheduled Maintenance Outage lasting 11 days. In November, there are 152 Peak Performance Hours (*i.e.*,  $(30-11) \times 8 = 152$ ). Assume for the purposes of this example that, during those specific hours in November, Lee County generated 2466 MWh in total. Lee County's Net Electric Capacity would be calculated to be 16.22 MW (*i.e.*,  $2466 \text{ MWh} / 152 \text{ hours}$ ). Therefore, Seminole's Monthly Capacity Payment would be ~~[\$81,100,XXX,XXX]~~ (*i.e.*,  $16.220 \text{ kW} \times \{\$xx5.xx00\}$  per kW-mo.).

**Appendix 32 - Capacity Payment, as Escalated**

**THE FOLLOWING EXHIBIT IS BASED UPON SEMINOLE'S PAYMENT PROPOSAL AND DOES NOT REFLECT LEE COUNTY'S ACCEPTANCE OF THESE PROPOSED RATES**

The Capacity Price for Net Electric Capacity shall escalate at one percent (1%) each calendar year, with the first adjustment to take place on January 1, 2005, and continuing each January 1, throughout the Capacity Payment Term of this Agreement. The Capacity Payments, as adjusted, will be as follows for each month during the calendar year:

<u>Year</u>	<u>On-Peak Months</u> <u>(per kW month)</u>	<u>Off-Peak Months</u> <u>(per kW month)</u>
2004	\$ 5.0000	\$ <del>2.0000</del> 5.0000
2005	\$ 5.0500	\$ <del>2.0250</del> 5.0250
2006	\$ 5.1005	\$ <del>2.1005</del> 5.1005
2007	\$ 5.1515	\$ <del>2.1515</del> 5.1515
2008	\$ 5.2030	\$ <del>2.2030</del> 5.2030
2009	\$ 5.2655	\$ <del>2.2655</del> 5.2655
2010	\$ 5.31075	\$ <del>2.31075</del> 5.31075
2011	\$5.36	\$5.36

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