



## **ARP EXECUTIVE COMMITTEE AGENDA PACKAGE**

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**April 18, 2019**

**9:15 a.m. [NOTE TIME]**

**Dial-in Info 877-668-4493 or 650-479-3208**

**Meeting Number 738 595 351**

### **Committee Members**

Howard McKinnon, Havana - Chairman

Lynne Tejeda, Key West – Vice Chairwoman

Jody Young, Bushnell

Lynne Mila, Clewiston

Fred Hilliard, Fort Meade

Paul Jakubczak, Fort Pierce

Robert Page, Green Cove Springs

Allen Putnam, Jacksonville Beach

Larry Mattern, Kissimmee

Glenn Spurlock, Leesburg

Bill Conrad, Newberry

Mike Poucher, Ocala

Robert Milner, Starke

### **Meeting Location**

**Florida Municipal Power Agency**

**8553 Commodity Circle**

**Orlando, FL 32819**

**(407) 355-7767**

# MEMORANDUM

TO: FMPA Executive Committee  
FROM: Jacob A. Williams, General Manager and CEO  
DATE: April 9, 2019  
RE: FMPA Executive Committee Meeting  
**Thursday, April 18, 2019 at 9:15am [NOTE TIME]**  
(or immediately following the Board of Directors meeting)  
PLACE: Florida Municipal Power Agency  
8553 Commodity Circle, Orlando, FL 32819  
Fredrick M. Bryant Board Room

**DIAL-IN: (877) 668-4493 or 650-479-3208, Meeting Number 738 595 351**  
**(If you have trouble connecting via phone or internet, call 407-355-7767)**

Chairman Howard McKinnon, Presiding

## AGENDA

1. Call to Order, Roll Call, Declaration of Quorum .....4
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3. Recognition of Guests .....6
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**\*Item also on the Board of Directors Agenda.**

**\*\* Item(s) Subject to Super Majority Vote**

NOTE: One or more participants in the above referenced public meeting may participate by telephone. At the above location there will be a speaker telephone so that any interested person can attend this public meeting and be fully informed of the discussions taking place either in person or by telephone communication. If anyone chooses to appeal any decision that may be made at this public meeting, such person will need a record of the proceedings and should accordingly ensure that a verbatim record of the proceedings is made, which includes the oral statements and evidence upon which such appeal is based. This public meeting may be continued to a date and time certain, which will be announced at the meeting. Any person requiring a special accommodation to participate in this public meeting because of a disability, should contact FMPA at (407) 355-7767 or (888) 774-7606, at least two (2) business days in advance to make appropriate arrangements.

**AGENDA ITEM 1 – CALL TO ORDER,  
ROLL CALL, DECLARATION OF QUORUM**

**Executive Committee  
April 18, 2019**

**AGENDA ITEM 2 – SET AGENDA (By Vote)**

**Executive Committee  
April 18, 2019**

**AGENDA ITEM 3 – RECOGNITION OF  
GUESTS**

**Executive Committee  
April 18, 2019**

**AGENDA ITEM 4 –PUBLIC COMMENTS  
(INDIVIDUAL COMMENTS TO BE LIMITED  
TO 3 MINUTES)**

**Executive Committee Meeting  
April 18, 2019**

# **VERBAL REPORT**

**AGENDA ITEM 5 – COMMENTS FROM THE  
CHAIRMAN**

**Executive Committee  
April 18, 2019**



# **VERBAL REPORT**

**AGENDA ITEM 6 – REPORT FROM THE  
GENERAL MANAGER**

**Executive Committee  
April 18, 2019**

**AGENDA ITEM 7 – CONSENT AGENDA**

- a) Approval of Meeting Minutes – Meeting Held March 21, 2019 and ARP Telephonic Rate Workshop Minutes – Workshop Held March 12, 2019**

**Executive Committee  
April 18, 2019**

**CLERKS DULY NOTIFIED .....MARCH 12, 2019**  
**AGENDA PACKAGES POSTED .....MARCH 12, 2019**

**MINUTES**  
**EXECUTIVE COMMITTEE**  
**THURSDAY, MARCH 21, 2019**  
**FLORIDA MUNICIPAL POWER AGENCY**  
**8553 COMMODITY CIRCLE**  
**ORLANDO, FL 32819**

**PARTICIPANTS**  
**PRESENT:**

Lynne Mila, Clewiston  
Paul Jakubczak, Fort Pierce  
Robert Page, Green Cove Springs  
Howard McKinnon, Havana  
Allen Putnam, Jacksonville Beach  
Lynne Tejeda, Key West (via telephone)  
Larry Mattern, Kissimmee (via telephone)  
Glenn Spurlock, Leesburg  
Bill Conrad, Newberry  
Mike Poucher, Ocala (via telephone)

**OTHERS**  
**PRESENT**

John Tompeck, Fort Pierce  
Karen Nelson, Jacksonville Beach  
George Forbes, Jacksonville Beach  
Jim Williams, Leesburg  
Craig Dunlap, Dunlap & Associates, Inc.  
Rob Taylor, GDS Associates  
Jonathan Nunes, nFront Consulting  
John Stough, Pike Electric  
Ivette Sanchez, Power Engineers

**STAFF**  
**PRESENT**

Jacob Williams, General Manager and CEO  
Jody Finklea, General Counsel and CLO  
Ken Rutter, Chief Operating Officer  
Linda Howard, Chief Financial Officer  
Carol Chinn, Chief Information and Compliance Officer  
Dan O'Hagan, Assistant General Counsel  
Mark McCain, Assistant General Manager, Member Services, Human Resources and Public Relations  
Rich Popp, Treasurer and Risk Director  
Danyel Sullivan-Marrero, Controller  
Sharon Adams, Human Resources Director  
Jason Wolfe, Financial Planning, Rates and Budget Director  
Sue Utley, Executive Asst. /Asst. Secy. to the Board  
Cairo Vanegas, Manager of Member Services Development  
Chris Gowder, Business Development and Planning Manager  
Luis Cruz, Information Technology Manager

Jesse Rivera, Information Technology Support Specialist  
Isabel Montoya, Information Technology Intern  
Susan Schumann, Manager of External Affairs and Solar Projects  
David Schumann, Power Generation Fleet Director

### **ITEM 1 - CALL TO ORDER, ROLL CALL, AND DECLARATION OF QUORUM**

Chairman Howard McKinnon, Havana, called the FMPA Executive Committee Meeting to order at 12:24 p.m. on Thursday, March 21, 2019 in the Frederick M. Bryant Board Room, Florida Municipal Power Agency, 8553 Commodity Circle, Orlando, Florida. The roll was taken and a quorum was declared with 10 members present out of a possible 13.

### **ITEM 2 – SET AGENDA (BY VOTE)**

**MOTION:** Allen Putnam, Jacksonville Beach, moved to set the agenda as written. Paul Jakubczak, Fort Pierce, seconded the motion. Motion carried 10 – 0.

### **ITEM 3 – RECOGNITION OF GUESTS**

None

### **ITEM 4 – PUBLIC COMMENTS**

None

### **ITEM 5 – COMMENTS FROM THE CHAIRMAN**

Chairman McKinnon said he enjoyed the Board of Directors meeting with the Employee Pulse Survey and Solar Project information. He said December 31, 2019 is his retirement date with the Town of Havana. Chairman McKinnon said the Agency is better off now than we were several years ago. The Board of Directors and Executive Committee can be proud of how the Agency is moving Forward. Chairman McKinnon said he hopes to be able to stay involved with the Agency by continuing to represent the Town of Havana at the Board of Directors and Executive Committee meetings.

### **ITEM 6 – REPORT FROM GENERAL MANAGER**

Jacob Williams, General Manager, had nothing more to report to the Executive Committee that wasn't in the Board of Directors report.

## **ITEM 7 – CONSENT AGENDA**

**Item 7a – Approval of Meeting Minutes – Held February 14, 2019; ARP Telephonic Rate Workshop Minutes – Workshop Held February 12, 2019**

**Item 7b – Approval of Treasury Reports – As of January 31, 2019**

**Item 7c – Approval of the Agency and All-Requirements Project Financials as of January 31, 2019**

**MOTION:** Allen Putnam, Jacksonville Beach, moved approval of the Consent Agenda as presented. Glenn Spurlock, Leesburg, seconded the motion. Motion carried 10 – 0.

## **ITEM 8 – ACTION ITEMS**

**Item 8a – Approval of FGU Directive for Main Street Prepaid Gas Transaction**

**MOTION:** Bob Page, Green Cove Springs, moved approval of gas volume for Main Street's 30-year TD Bank prepaid gas transaction not exceeding 8,000 MMBtu per day. Allen Putnam, Jacksonville Beach, seconded the motion. Motion carried 9 – 1 with Newberry voting nay.

Discussion ensued.

**NEW MOTION:** Paul Jakubczak, Fort Pierce, moved approval of authorizing the General Manager to sign, with General Counsel consent, an FGU Directive for participation in Main Street's 30-year TD Bank prepaid gas transaction. Gas volume will not exceed 8,000 MMBtu per day at a net discount no less than 30 cents for the first five years. Glenn Spurlock, Leesburg, seconded the motion. Motion carried 9 – 1 with Newberry voting nay.

**Item 8b – Approval of Proposed Revision of LAIR Rider for Metering Requirements**

**MOTION:** Paul Jakubczak, Fort Pierce, moved approval of the revised Loan Attraction Incentive Rate Rider to the ARP Rate Schedule B-1, to be effective April 1, 2019. Glenn Spurlock, Leesburg, seconded the motion. Motion carried 10 – 0.

## **ITEM 9 – INFORMATION ITEMS:**

**a. Final Numbers on Use of Vero Beach Proceeds**

Linda S. Howard updated the Executive Committee on the final numbers on redemption of Series 2008C bonds and termination, or partial termination of related interest rate swaps, from the Vero Beach proceeds.

**b. Appointment of Finance Committee Members**

Linda S. Howard updated the Executive Committee on the members of the newly formed Finance Committee which combines and replaces the Audit and Risk Oversight Committee and Business Planning and Budget Committee.

**c. Update on Sales of Capacity and Energy**

Chris Gowder presented information on current efforts for sales of capacity and energy.

**d. RFP for External Auditors**

Danyel Sullivan-Marrero presented information on the upcoming Request for Proposals to be submitted by FMPA for external auditors.

**ITEM 10 – MEMBER COMMENTS**

None

**ITEM 11 – Adjournment**

There being no further business, the meeting was adjourned at 1:22 p.m.

\_\_\_\_\_  
Howard McKinnon  
Chairperson, Executive Committee

\_\_\_\_\_  
Sue Utley  
Assistant Secretary

Approved: \_\_\_\_\_

Seal

**PUBLIC NOTICE SENT TO CLERKS .....MARCH 8, 2019**  
**AGENDA PACKAGES SENT TO MEMBERS.....MARCH 11, 2019**

**MINUTES  
EXECUTIVE COMMITTEE  
ALL-REQUIREMENTS POWER SUPPLY PROJECT  
TELEPHONIC RATE WORKSHOP  
TUESDAY, MARCH 12, 2019  
FLORIDA MUNICIPAL POWER AGENCY  
8553 COMMODITY CIRCLE  
ORLANDO, FLORIDA 32819**

**COMMITTEE MEMBERS PRESENT**

Christina Simmons, Bushnell (via telephone)  
Lynne Mila, Clewiston (via telephone)  
John Tompeck, Fort Pierce (via telephone)  
Bob Page, Green Cove Springs (via telephone)  
Howard McKinnon, Havana (via telephone)  
Larry Mattern, Kissimmee (via telephone)  
Glenn Spurlock, Leesburg (via telephone)  
Bill Conrad, Newberry (via telephone)

**COMMITTEE MEMBERS ABSENT**

Fred Hilliard, Fort Meade  
Allen Putnam, Jacksonville Beach  
Lynne Tejeda, Key West  
Mike Poucher, Ocala  
Robert Milner, Starke

**OTHERS PRESENT**

Kevin Crawford, Kissimmee (via telephone)

**STAFF PRESENT**

Jacob Williams, General Manager and CEO  
Jody Finklea, General Counsel and CLO (via telephone)  
Linda S. Howard, CFO  
Sue Utley, Executive Assistant to General Manager and CEO / Asst.  
Secy. to the Board  
Joe McKinney, Systems Operation Manager (via telephone)  
Jason Wolfe, Financial Planning and Analysis Manager  
Steve Ruppel, Senior Financial Analyst (via telephone)

**Item 1 – Call to Order**

Chairman Howard McKinnon, Havana, called the Executive Committee All-Requirements Telephonic Rate Workshop to order at 2:\_\_\_ p.m. on Tuesday, March 12, 2019, via telephone. A speaker telephone for public attendance and participation was located in the Library at Florida Municipal Power Agency, 8553 Commodity Circle, Orlando, Florida.

**Item 2 – Information Items**

Mr. Wolfe gave a verbal update on the natural gas markets; provided an overview of the February loads; provided a verbal report on Florida Municipal Power Pool Operations for February; and reviewed the February ARP rate calculation.

**Item 3 – Member Comments**

None

There being no further business, the meeting was adjourned at \_\_\_\_\_ p.m.

\_\_\_\_\_

Approved

HM/su



**AGENDA ITEM 7 – CONSENT AGENDA**

**b) Approval of Treasury Reports as of  
February 28, 2019**

**Executive Committee  
April 18, 2019**

## AGENDA PACKAGE MEMORANDUM

TO: FMPA Executive Committee  
FROM: Gloria Reyes  
DATE: April 9, 2019  
ITEM: EC 7(b) – Approval of the All-Requirements Project Treasury Reports as of February 28, 2019

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- Introduction
- This report is a quick summary update on the Treasury Department’s functions.
  - The Treasury Department reports for February are posted in the member portal section of FMPA’s website.
- 

Debt Discussion

The All-Requirements Project has fixed, variable, and synthetically fixed rate debt. The variable rate bonds and lines of credit portion is 1.41%. The fixed and synthetic fixed rate percentages of total debt are 82.67% and 15.92%, respectively. The estimated debt interest funding for fiscal year 2019 as of February 28, 2019 is \$40,723,005.35. The total amount of debt outstanding is \$929,093,000.<sup>1</sup>

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Hedging Discussion

The Project has 8 interest rate swap contracts. As of February 28, 2019, the cumulative market value of the interest rate swaps in the All-Requirements Project was (17,400,668).

The Swap Valuation Report is a snap shot of the mark-to-market values at the end of the day on February 28, 2019. The report for February is posted in the “Member Portal” section of FMPA’s website.

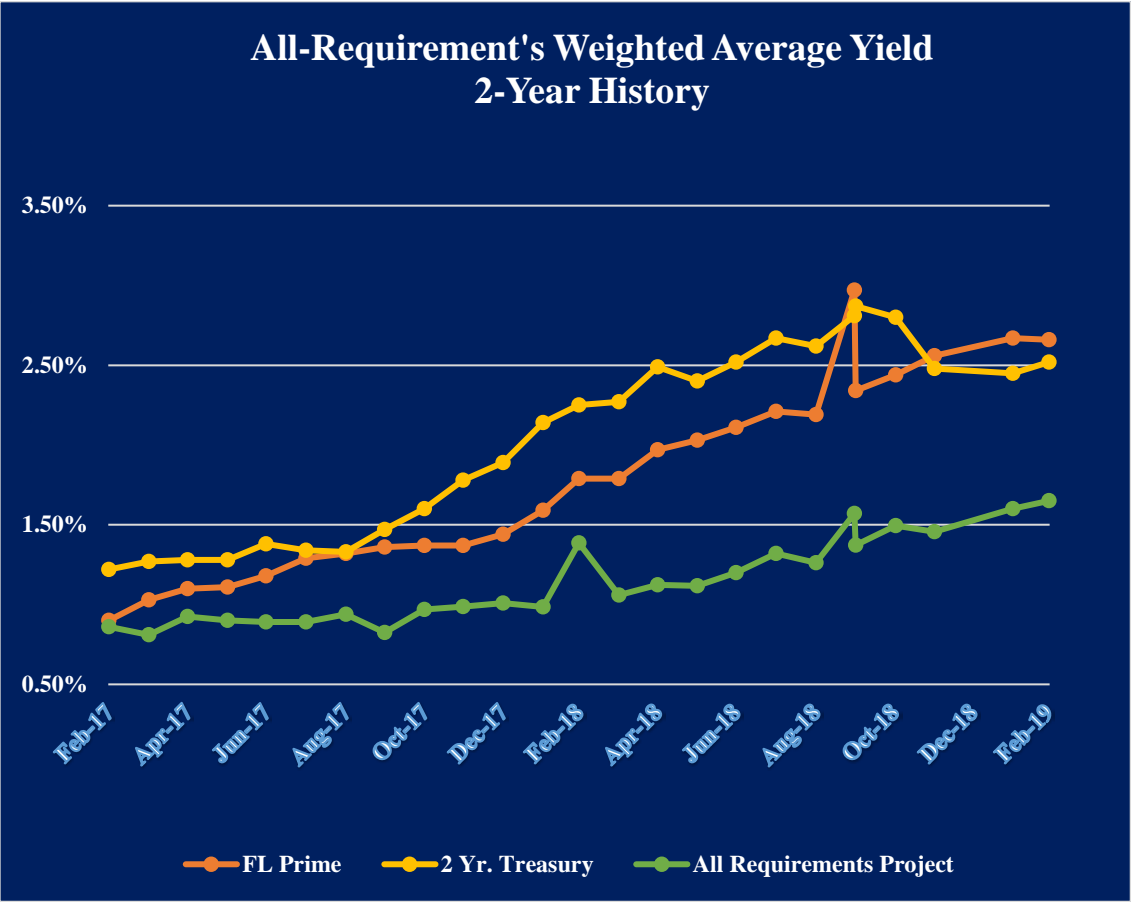
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Investment Discussion

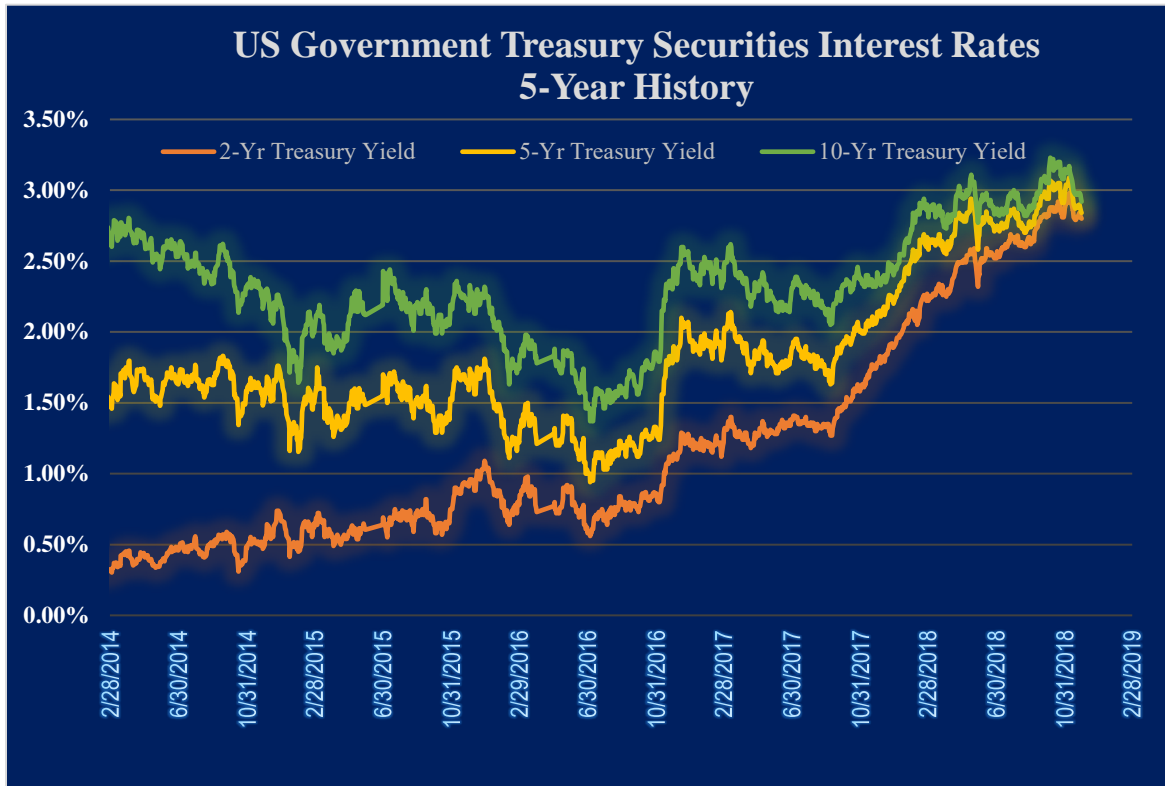
The investments in the Project are comprised of debt from the government-sponsored enterprises such as the Federal Farm Credit Bank, Federal Home Loan Bank, Federal Home Loan Mortgage Corporation (Freddie Mac), and Federal National Mortgage Association (Fannie Mae), as well as investments in U.S. Treasuries, Municipal Bonds, Commercial Paper and Money Market Mutual Funds.

<sup>1</sup> Although still on deposit, the line of credit draw amount of \$5,000,000 is included in the total amount of debt outstanding.

As of February 28, 2019, the All-Requirements Project investment portfolio earned a weighted average rate of return of 1.65%, reflecting the All-Requirements Project need for liquidity given its 60-day cash position. The benchmarks (SBA’s Florida Prime Fund and the 2-year US Treasury Note) and the Project’s yields are graphed below:



Below is a graph of U.S. Treasury yields for the past 5 years.



The Investment Report for February is posted in the “Member Portal” section of FMPA’s website.

Recommended  
Motion

Move for approval of the Treasury Reports for February 28, 2019

**AGENDA ITEM 7 – CONSENT AGENDA**

- c) Approval of the Agency and All-Requirements Project Financials as of February 28, 2019**

**Executive Committee  
April 18, 2019**



Linda S. Howard, CPA, CTP  
Chief Financial Officer

## MEMORANDUM

**TO:** FMPA Executive Committee  
**FROM:** Linda S. Howard  
**DATE:** April 9, 2019  
**SUBJECT:** EC 7c – Approval of the Agency and All-Requirements Project Financials for the period ended February 28, 2019

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**Discussion:** The summary and detailed financial statements of the Agency and All- Requirements Project for the period ended February 28, 2019 are posted on the Document Portal section of FMPA’s website.

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**Recommended Motion:** Move approval of the Agency and All-Requirements Project Financial reports for the month of February 28, 2019.

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LH/su

**AGENDA ITEM 8 – ACTION ITEMS**

- a) Approval of Extension of Load Attraction Incentive Rate (LAIR)**

**Executive Committee  
April 18, 2019**



# **EC 8a – Approval of Extension of Load Attraction Incentive Rate (LAIR)**

FMMPA Executive Committee

April 18, 2019



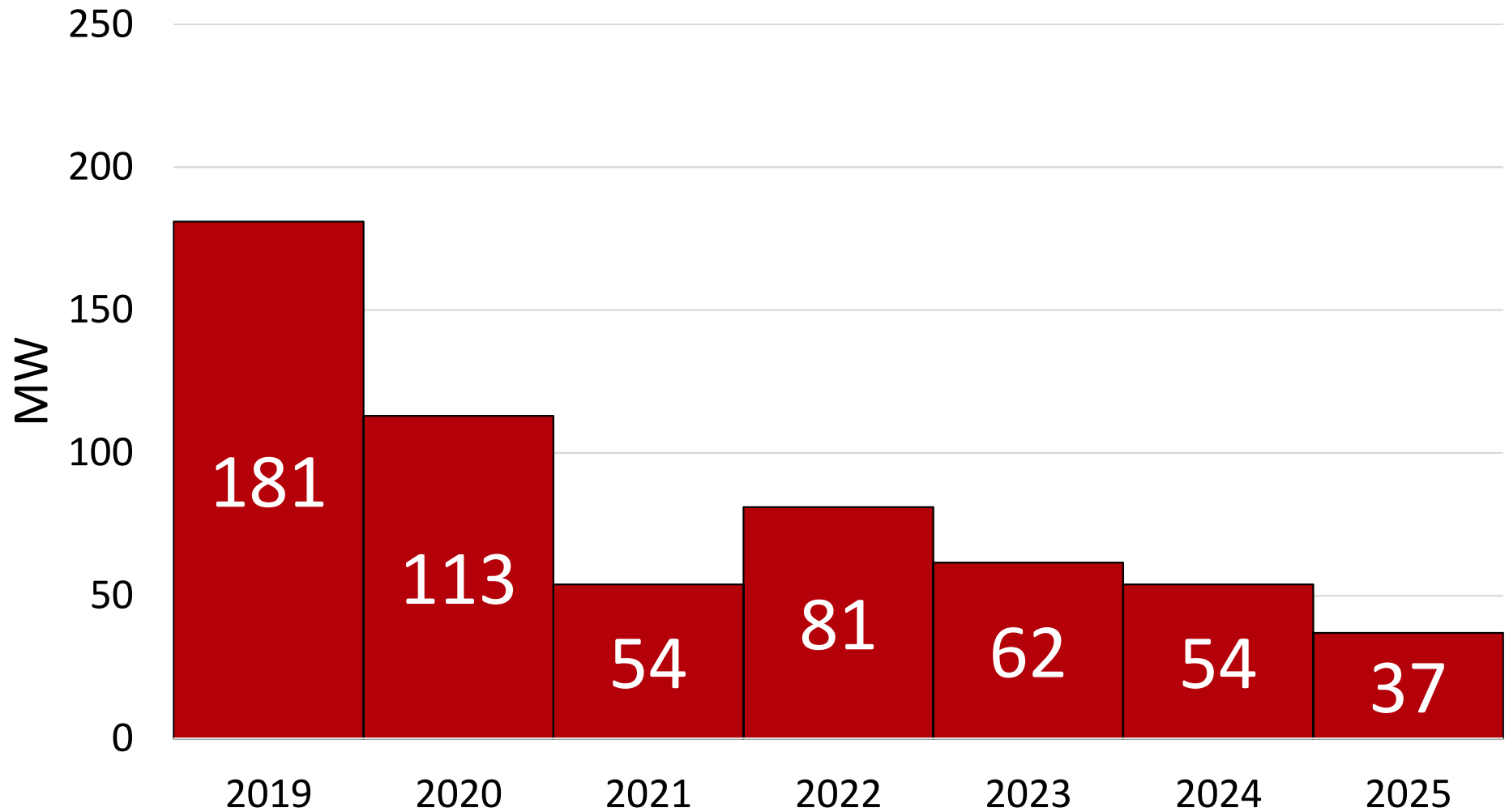
# Seeking 4-Year Extension of LAIR Sunset Date to December 31, 2024

*Incentivizing Native Load Growth Benefits All Participants*

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- Load Attraction Incentive Rate (LAIR) currently sunsets on December 31, 2020
- Green Cove Springs recently requested that the LAIR be extended beyond the current sunset date
- Staff believes ARP has sufficient capacity to allow for extension
- Staff proposing capping eligibility for LAIR once 30 MW of total ARP load added under LAIR and/or Economic Development Rate Riders
- Even with LAIR discount, growing native load provides greater return to ARP than selling capacity to others

# ARP Projected to Have Excess Capacity



# LAIR Incentive Declines over a 5-Year Period

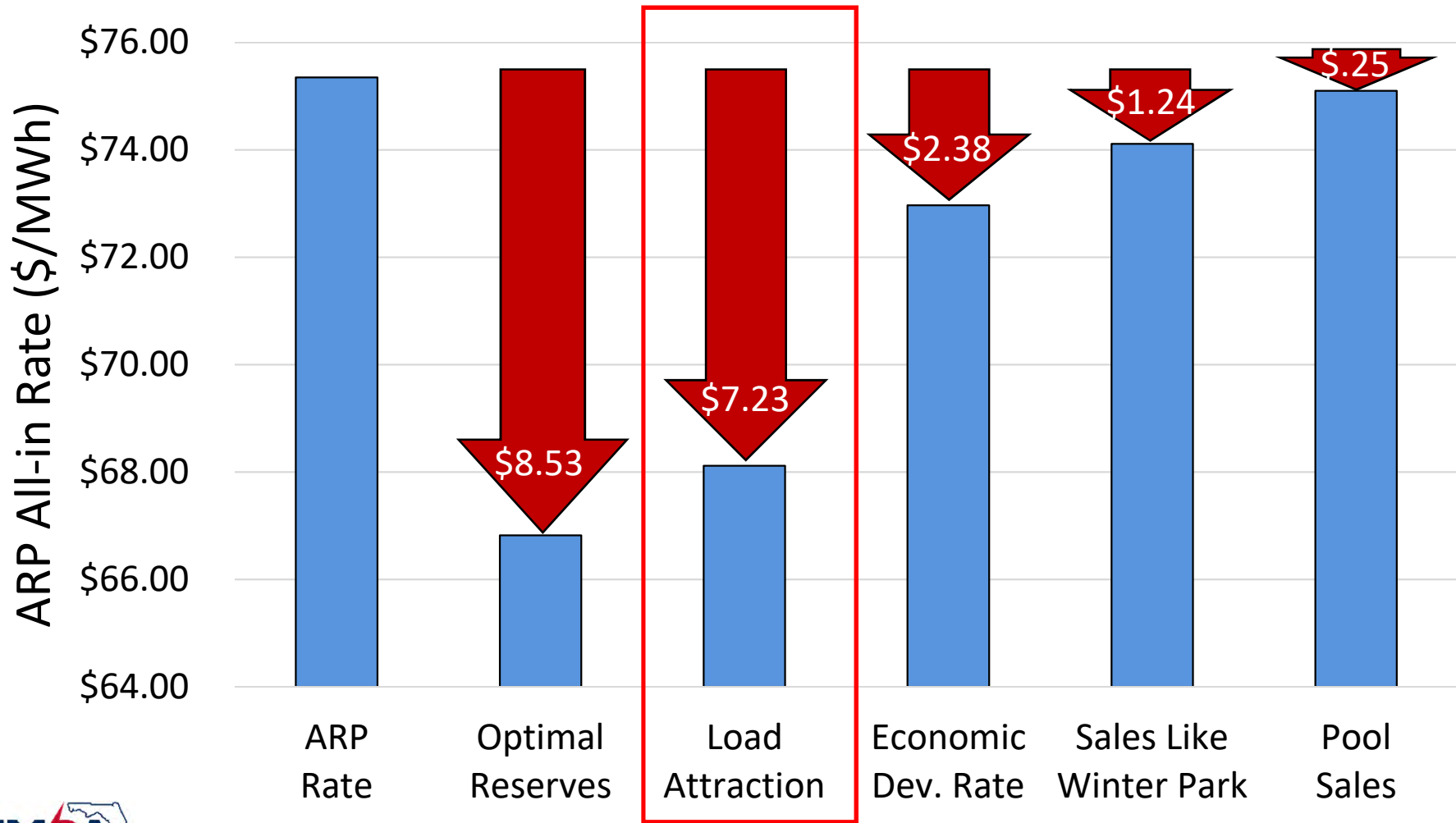
*New Load Charged Full ARP Demand Rate at End of 5 Years*

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Service Month	Discount on ARP Base Demand Capacity Charge (%)	Discount Based on FY 2019 Base Demand Rate (\$20.10/kW-mo.)
1-12	50%	\$10.05
13-24	40%	\$8.04
25-36	30%	\$6.03
37-48	20%	\$4.02
49-60	10%	\$2.01
61 and beyond	0%	\$0.00

# LAIR Benefits ARP, Reduces ARP Rate

*Provides Greater Return on Use of Excess Capacity than Other Opportunities*



# Proposed Changes to Section 8 of the LAIR Rider (Sunset Provision)

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- Sunset Provision. This Rider will be available to qualifying New Loads that begin service on or before December 31, ~~2020~~2024, or until a total of 30 MW of New Load has qualified under this Rider and/or any other incentive rate rider to Rate Schedule B-1, whichever occurs first.

# Staff Seeking Approval of Revised LAIR

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- Clean and red-lined versions of the LAIR Rider with the proposed new language are included in the package

# Recommended Motion

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- Move approval of the revised Load Attraction Incentive Rate Rider to ARP Rate Schedule B-1, to be effective May 1, 2019.

**AGENDA ITEM 8 – ACTION ITEMS**

- b) Approval of ARP Conservation Program  
Funding for Fiscal Year 2020**

**Executive Committee  
April 18, 2019**





# **EC 8b - Approval of ARP Conservation Program Funding for FY '20**

FMIPA Executive Committee  
April 18, 2019

# ARP Rate Funds Conservation Programs

## *Annually, Members Decide on Funding Level*

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- ARP Members currently offer more than 20 different conservation measures & programs for customers
  - Rebates – HVAC, appliances, duct leak repair, insulation upgrade, solar hot water heater, etc.
  - Energy Audits
  - Equipment
  - Marketing Materials

# Program Activity Continues to be Steady

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Through FY '18 ...

>\$ 8 million  
allocated to  
members

Member programs  
have provided nearly  
100,000 rebates,  
brochures and  
education material  
etc. to retail  
customers since its  
inception

Members have  
spent 97% of all  
funds allocated  
to date

# Measures Provide Ongoing Savings

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- Conservation measures can have energy saving impacts ranging from 1 year up to 30 years (depending on measure)
- Measures implemented since program inception provided the ARP an estimated energy savings of 17,705 MWh in FY 2018
  - Savings to continue through the useful life of the measures
- Measures purchased & implemented in FY 2018 have the potential to save 40,413 MWh over the useful life of the measures
  - When considering total spent on these measures in FY 2018, each MWh of energy savings “cost” \$20.75

# Program Provides Other Benefits

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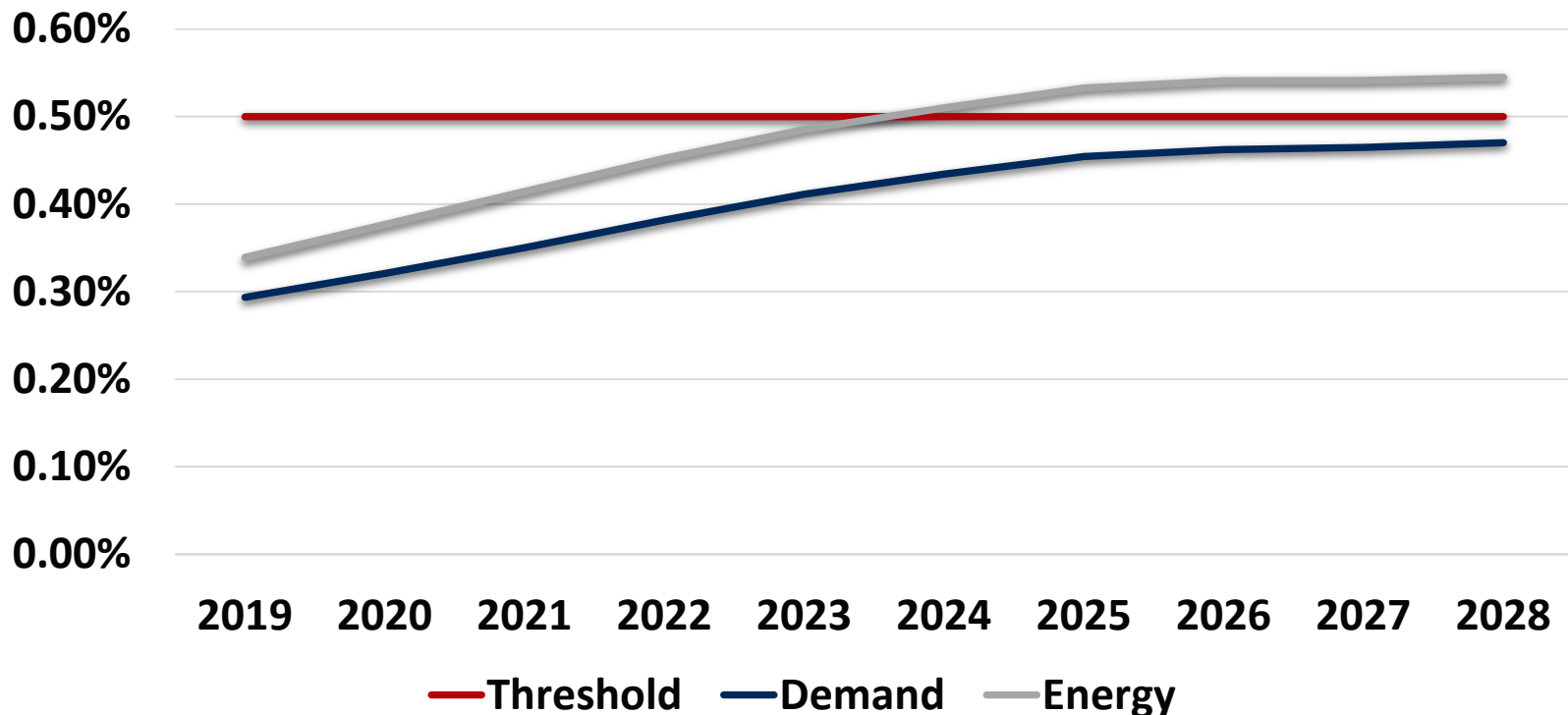
- Saves money for customers
- Supports customers' energy efficiency efforts
- Enhances customer service
- Supports public relations
- Provides offerings comparable to other utilities

# Savings Partially Over Threshold\*\*

## 2020 Load Forecast Process May be Impacted

### Estimated ARP-Funded Conservation Savings

% Savings for Energy and Demand Based on 2019 FMPA Load Forecast



SOURCE: FMPA ARP Conservation Model

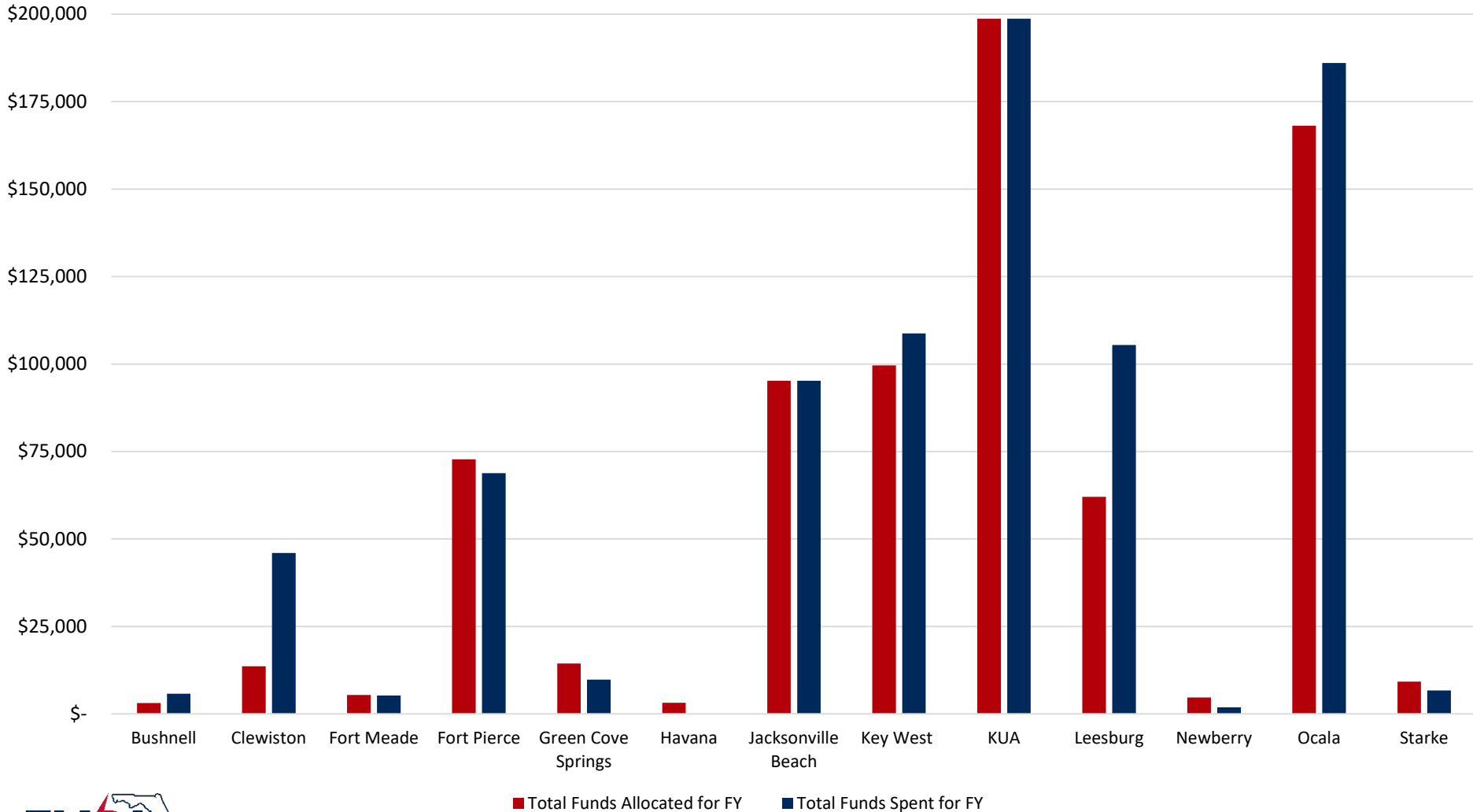
# FY '18 Spending Exceeded Allocation

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- For FY '18:
  - \$750,000 Allocated
  - \$ 838,411 Spent by Members
    - Excess due to rollover of unspent funds
- 7 members spent 100% or more of their funds
  - Another 4 members spent more than 60%

# Most Members Spent Their Allocation

FY '18 Allocation vs Spending





# FY '19 Conservation Account Balances

Member	Rollover Funds Available (9/30/18)	Funds Allocated for FY '19	Total Funds Available (10/1/18)
Bushnell	\$1,700	\$3,157	\$4,857
Clewiston	\$42,702	\$13,611	\$56,313
Fort Meade	\$180	\$5,276	\$5,456
Fort Pierce	\$36,011	\$73,262	\$109,273
Green Cove Springs	\$23,583	\$14,222	\$37,805
Havana	\$21,789	\$3,084	\$24,873
Jacksonville Beach	\$0	\$93,433	\$93,433
KUA	\$0	\$204,452	\$204,452
Key West	\$43	\$96,327	\$96,370
Leesburg	\$18,978	\$62,625	\$81,603
Newberry	\$8,588	\$4,670	\$13,258
Ocala	\$13,300	\$166,843	\$180,143
Starke	\$18,406	\$9,038	\$27,444
<b>TOTAL</b>	<b>\$185,279</b>	<b>\$750,000</b>	<b>\$935,279</b>

# Annual Funding Levels Have Varied

## *CREAC Recommends \$750,000 for FY '20*

Fiscal Year	Funding Level	Estimated Rate Impact (\$/MWh)
FY '09 <sup>1</sup>	\$1,000,000	\$0.15
FY '10	\$525,000	\$0.09
FY '11	\$750,000	\$0.12
FY '12	\$750,000	\$0.12
FY '13	\$750,000	\$0.12
FY '14	\$750,000	\$0.12
FY '15	\$700,000	\$0.12
FY '16 <sup>2</sup>	\$700,000	\$0.12
FY '17	\$700,000	\$0.12
FY '18	\$750,000	\$0.13
FY '19	\$750,000	\$0.12

<sup>1</sup> FY '09 included \$100k for conservation videos and program admin

<sup>2</sup> FY '16 included \$50k for updating conservation videos

# Allocation Options & Estimated Rate Impact for FY '20

Member	\$650,000	\$700,000	\$750,000	Current FY '19 (\$750,000) for reference
Bushnell	\$2,784	\$2,998	\$3,212	\$3,157
Clewiston	\$11,495	\$12,380	\$13,264	\$13,611
Fort Meade	\$4,671	\$5,030	\$5,389	\$5,276
Fort Pierce	\$62,366	\$67,164	\$71,961	\$73,262
Green Cove Springs	\$12,489	\$13,449	\$14,410	\$14,222
Havana	\$2,747	\$2,959	\$3,170	\$3,084
Jacksonville Beach	\$80,728	\$86,938	\$93,148	\$93,433
KUA	\$178,891	\$192,651	\$206,412	\$204,452
Key West	\$81,919	\$88,221	\$94,522	\$96,327
Leesburg	\$55,054	\$59,289	\$63,524	\$62,625
Newberry	\$4,242	\$4,568	\$4,894	\$4,670
Ocala	\$144,852	\$155,995	\$167,137	\$166,843
Starke	\$7,761	\$8,359	\$8,956	\$9,038
<b>Est. Rate Impact (\$/MWh)</b>	<b>\$0.106</b>	<b>\$0.114</b>	<b>\$0.122</b>	<b>\$0.124</b>

# Recommended Motion

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- Move approval of funding the ARP Conservation Program at \$750,000 for Fiscal Year '20. The program will be funded out of revenues collected through the ARP Energy Rate at an approximate rate impact of \$0.12/MWh.

**AGENDA ITEM 8 – ACTION ITEMS**

- c) Approval of FGU Directive for Black Belt Energy Prepaid Gas Transaction**

**Executive Committee  
April 18, 2019**



# **EC 8c – Approval of FGU Directive for Black Belt Energy Prepaid Gas Transaction**

FMIPA Executive Committee

April 9, 2019

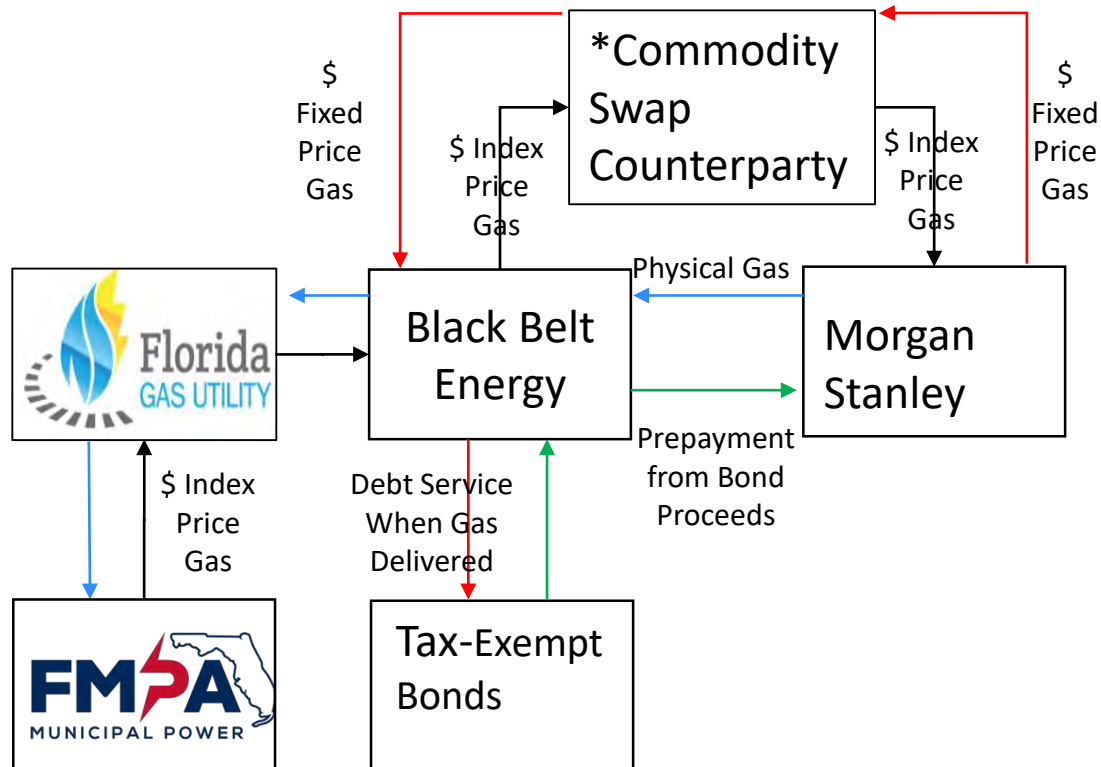
# Who Is Black Belt Energy

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- BBE is a gas district and public corporation organized and existing pursuant to the laws of the State of Alabama
- BBE is empowered as a joint action gas supply agency to acquire long-term natural gas supplies for sale to governmentally-owned wholesale customers, both gas distributors and electric generators, throughout the State of Alabama (the “State”) and outside the State
- BBE is governed by a Board of Directors consisting of the Mayors of its three Member Municipalities in the State: one from each of the cities of Thomasville, Jackson, and Grove Hill

# FGU Directive for Black Belt Prepaid Gas Transaction

*Mirroring Prior Approved Transactions with FGU & Main Street*



- ARP will purchase “1<sup>st</sup> of the month” gas the same way it does now
- ARP’s only obligation is to pay for gas when delivered
- ARP agrees to a long-term gas supply commitment from FGU



# Black Belt Energy Opportunity, ARP Savings \$1.095M Year 1

## *“Put” Structure Targeting 30¢ Discount*

---

- Target is a net minimum of 30¢ per MMBtu
  - 10,000 MMBtu p/d for years 1-30
- Put Structure repricing between every 5 to 6 year
  - Net minimum repricing discount 20¢
- Planned Prepaid Savings
  - Energy Rate Savings Year 1: \$0.19 per MWh
  - 30 year life-time savings using minimum discount \$23,725,000

# Approval For Black Belt Up To 10k Per Day

## *Current Market Conditions Meet Minimum Discount Target*

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- Same “Put” Structure as prior approved Main Street RBC and TD transaction
  - Currently approved 13,250 MMBtu p/d total
    - With BBE ARP would have 23,250 MMBtu p/d
    - Brings ARP to ~26% of the three baseload generation daily need
    - Gas Supply Agreement substantially same terms and conditions as other transactions
- FGU Directive will be same terms and conditions as other transactions
- Underwriter is Morgan Stanley Bank
  - Morgan Stanley credit rating of A3 Moody's/A Fitch is lower than other banks and generates a higher prepaid discount.

# Black Belt Energy Gas Supply Agreement

## *Exit Provisions Same as Main Street*

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- Ability to remarketing any of the prepaid volume to qualified entity
  - FGU is first option to remarket
  - BBE is second option to remarket for a 5 cent fee
    - Remarketing can be for daily/monthly or seasonal duration
- Permanent exit provision in Section 4.6
  - “the permanent loss of gas-fired electric generation facilities (evidenced by the municipal electric joint action agency’s Executive Committee or Board of Directors (or other denominated governing body)”
  - “determination shall not be unreasonably withheld, conditioned, or delayed”

# Summary of Prepaid Transactions & Opportunities

*Closed and Near Closing 13,250 MMBtu per day*

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## Closed

- Main Street/RBC 2,750 p/d discount \$0.40
- Main Street/Macquarie 2,500 p/d discount \$0.30

## Near Closing

- Main Street/TD 8,000 p/d discount \$0.30

## Approval Needed

- Black Belt/Morgan up to 10,000 p/d discount \$0.30

# Recommended Motion

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- Move approval of authorizing the General Manager to sign, an FGU Directive for participation in Black Belt Energy's 30-year Morgan Stanley Prepaid Gas transaction. Gas volume will not exceed 10,000 MMBtu per day at a net discount no less than 30 cents for the first five years.

**GAS SUPPLY CONTRACT**

**BY AND BETWEEN**

**THE BLACK BELT ENERGY GAS DISTRICT**

**AND**

**FLORIDA GAS UTILITY**

**DATED AS OF APRIL 1, 2019**

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## **GAS SUPPLY CONTRACT**

### **PREAMBLE**

This Gas Supply Contract (this “Contract”), dated as of March 1, 2019 (the “Effective Date”), is made and entered into by and between Florida Gas Utility, a Florida public body corporate and politic and joint action agency formed under the Florida Interlocal Cooperation Act (“Gas Purchaser”), and The Black Belt Energy Gas District (“Issuer”). Gas Purchaser and Issuer are sometimes hereinafter referred to in this Contract collectively as the “Parties” or individually as a “Party”.

### **RECITALS**

WHEREAS, Issuer is a public corporation organized as a gas district under the Laws of the State of Alabama; and

WHEREAS, Issuer has planned and developed a project to acquire long-term Gas supplies from Morgan Stanley Energy Structuring, L.L.C., a Delaware limited liability company (“MSES”) and a wholly-owned subsidiary of Morgan Stanley, pursuant to a Prepaid Natural Gas Sales Agreement dated April \_\_\_\_\_, 2019 (the “Prepaid Gas Agreement”), to meet a portion of the Gas supply requirements of Gas Purchaser and other municipal utilities and joint action agencies that elect to participate (together, the “Project Participants”) through a gas prepayment project (the “Prepaid Project”); and

WHEREAS, Gas Purchaser desires to enter into an agreement with Issuer for the purchase of Gas supplies from the Prepaid Project; and

WHEREAS, Issuer will finance the prepayment under, and the other costs of, the Prepaid Project by issuing Bonds; and

WHEREAS, Gas Purchaser is a Florida public body corporate and politic and a joint action agency formed under the Florida Interlocal Cooperation Act and owns and operates a gas supply joint action organization for the sale and delivery of Gas and related services to its wholesale municipal gas distribution system members, municipal electric distribution system members, and other municipal electric joint action agencies;; and

WHEREAS, Gas Purchaser has a need to acquire a portion of its Gas needs at index-based market prices and on a long-term basis in order to enable Gas Purchaser to ensure that it may provide wholesale service at competitive prices; and

WHEREAS, Gas Purchaser is agreeable to purchasing a portion of its Gas requirements from Issuer under the terms and conditions set forth in this Contract and Issuer is agreeable to selling to Gas Purchaser such supplies of Gas under the terms and conditions set forth in this Contract.

NOW, THEREFORE, in consideration of the premises and mutual covenants set forth in this Contract and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Issuer and Gas Purchaser agree as follows.

**ARTICLE I**  
**DEFINITIONS AND CONSTRUCTION**

1.1. Construction of this Contract. The Preamble and the Recitals set forth above are incorporated into this Contract for all purposes. References to Articles, Sections, and Exhibits throughout this Contract are references to the corresponding Articles, Sections, and Exhibits of this Contract unless otherwise specified. All Exhibits are incorporated into this Contract for all purposes. References to the singular are intended to include the plural and vice versa. The word “including” and related forms thereof are intended to be interpreted inclusively, whether or not the phrase “but not limited to” follows such word or words. The words “will” and “shall” indicate mandatory requirements of the Parties except in the Recitals.

1.2. Definitions. Unless another definition is expressly stated in this Contract, the following terms and abbreviations, when used in this Contract, are intended to and shall mean as follows:

- (a) “Alternate Delivery Point” has the meaning specified in Section 3.1.
- (b) “Annual Refund” means the annual refund, if any, provided to Gas Purchaser and calculated pursuant to the procedures specified in Section 4.5.
- (c) “Annualized Daily Quantity” or “ADQ” means for any Year the sum of the Daily Contract Quantities divided by the number of days in the Year.
- (d) “Applicable Rating Agencies” means, at any given time, each Rating Agency then rating the Bonds.
- (e) “Available Discount” means, for each Reset Period, the amount, expressed in cents per MMBtu (rounded down to the nearest one-half cent), determined by the Calculation Agent pursuant to the Re-Pricing Agreement for such Reset Period. The Available Discount shall equal the sum of the Monthly Discount and any anticipated Annual Refunds for the applicable Reset Period.
- (f) “Board of Directors” means the Board of Directors of Issuer.
- (g) “Bond Closing Date” means the date on which the Bonds are issued pursuant to the Bond Indenture.
- (h) “Bond Indenture” means the Trust Indenture for the Bonds, dated as of April 1, 2019, between Issuer and the Trustee, providing for the issuance of and security for the Bonds, together with any other trust indenture providing for the issuance of and security for any refunding Bonds, in each case as the same may be amended from time to time.

(i) “Bonds” means Issuer’s Gas Supply Revenue Bonds, Series 2019 (including multiple sub-series), issued to finance Issuer’s purchase of Gas from MSES under the Prepaid Gas Agreement and costs associated therewith, and any Refunding Bonds issued by Issuer under the Bond Indenture.

(j) “Btu” means one British thermal unit, the amount of heat required to raise the temperature of one pound of water one degree Fahrenheit at 60 degrees Fahrenheit, and is the International Btu. The reporting basis for Btu is 14.73 pounds per square inch absolute and 60 degrees Fahrenheit; provided, however, that the definition of Btu as determined by the operator of the relevant Delivery Point shall be deemed conclusive in accordance with Article VI of the Prepaid Gas Agreement; and provided further that in the event of an inconsistency in the definition of “Btu” between this definition and the definition of “Btu” in the Prepaid Gas Agreement, the definition in the Prepaid Gas Agreement shall apply.

(k) “Business Day” means (i) with respect to payments and general notices required to be given under this Contract, any day other than (a) a Saturday or Sunday, (b) a Federal Reserve Bank holiday, (c) any day on which commercial banks located in either New York, New York, or the State of Alabama are required or authorized by law or other governmental action to close, or (d) any other day excluded pursuant to the Bond Indenture, and (ii) with respect to Gas deliveries and notices with respect thereto, any day.

(l) “Calculation Agent” has the meaning specified in the Re-Pricing Agreement.

(m) “Central Prevailing Time” or “CPT” means Central Daylight Savings Time when such time is applicable and otherwise means Central Standard Time.

(n) “Cf” means cubic foot of Gas, defined as the amount of Gas required to fill a cubic foot of space when the Gas is at an absolute pressure of 14.73 pounds per square inch absolute and at a temperature of 60 degrees Fahrenheit.

(o) “Code” means the Internal Revenue Code of 1986, as amended, 26 U.S.C. §1 *et seq.* References herein to the Code or a section of the Code include the U.S. Treasury Regulations thereunder.

(p) “Commercially Reasonable” or “Commercially Reasonable Efforts” means, with respect to any decision, purchase, sale or other action required to be made, attempted or taken by a Party under this Contract, such decision or efforts as a reasonably prudent Person would make or undertake, as the case may be, for the protection of its own interest under the conditions affecting such decision, purchase, sale or other action. For the avoidance of doubt, the reasonableness of any action taken by a Party under this Contract shall be determined at the time of such action, taking into full account the facts, circumstances and competitive environment surrounding such action.

(q) “Commodity” means Gas or Electricity, as applicable.

(r) “Commodity Swap” means (i) the transaction confirmation entered into under the ISDA Master Agreement, with respect to the Prepaid Project, by Issuer and the

Commodity Swap Counterparty, and (ii) each replacement commodity swap entered into pursuant to the Prepaid Gas Agreement.

(s) “Commodity Swap Counterparty” means Issuer’s counterparty under the Commodity Swap, which initially shall be \_\_\_\_\_.

(t) “Contract” is defined in the Preamble.

(u) “Contract Price” has the meaning specified in Section 4.2.

(v) “Daily Contract Quantity” or “DCQ” means, for each Month, the quantity of Gas in MMBtu scheduled to be delivered by Issuer to Gas Purchaser and received by Gas Purchaser from Issuer each Gas Day during such Month, as set forth in Exhibit B.

(w) “Daily Gas Obligation” means, for each Gas Day for which a Daily Remarketing Amount accrued, an amount equal to the Contract Price for such Gas Day multiplied by the result of (A) the Daily Contract Quantity, less (B) the quantity of Gas remarketed by Gas Purchaser.

(x) “Daily Remarketing Amount” means, for each Gas Day on which Gas Purchaser remarkets Gas received under this Contract in a manner that does not comply with the Qualifying Use Requirements, an amount equal to the index price that would have applied to such Gas under Section 4.1 multiplied by the quantity of Gas remarketed by Gas Purchaser.

(y) “Delivery Period” means the period beginning \_\_\_\_\_ 1, 2019, and continuing through \_\_\_\_\_, 2049, unless the Contract is terminated early pursuant to Article V.

(z) “Delivery Point” is defined in Section 3.1.

(aa) “Disqualified Sale Proceeds” is defined in Section 23.3(b).

(bb) “Disqualified Sale Units” is defined in Section 23.3(b).

(cc) “Electricity” means three-phase, 60-cycle alternating current electric energy, expressed in megawatt hours.

(dd) “Event of Insolvency” means with respect to any Person the occurrence and continuance of one or more of the following events: (a) the issuance, under the laws of the state or other jurisdiction having primary regulatory authority over such Person or any successor provision thereto (or any other law under which such Person is at the time organized), of an order for relief, rehabilitation, reorganization, conservation, liquidation or dissolution of such Person that is not dismissed within 30 days; (b) the commencement by such Person of a voluntary case or other proceeding seeking an order for relief, liquidation, rehabilitation, conservation, reorganization or dissolution with respect to itself or its debts under the laws of the state or other jurisdiction of incorporation or formation of such Person or any bankruptcy, insolvency or other similar law now or hereafter in effect including, without limitation, the appointment of a trustee, receiver, liquidator, custodian or other similar official for itself or any substantial part of its property; (c) the

consent of such Person to any relief referred to in the preceding clause (b) in an involuntary case or other proceeding commenced against it; (d) the appointment of a trustee, receiver, liquidator, custodian or other similar official for such Person or any substantial part of its property by a Government Agency or authority having the jurisdiction to do so; (e) the making by such Person of an assignment for the benefit of creditors; (f) the failure of such Person generally to pay its debts or claims as they become due; (g) the Person shall admit in writing its inability to pay its debts when due; (h) the declaration of a moratorium with respect to the payment of the debts of such Person; or (i) the initiation by such Person of any action to authorize any of the foregoing.

(ee) “Failed Remarketing” has the meaning specified in the Bond Indenture.

(ff) “FERC” means the Federal Energy Regulatory Commission and any successor thereto.

(gg) “FERC Gas Tariff” means the interstate pipeline tariff filed by a Transporter pursuant to FERC regulations and approved by FERC, as amended from time to time.

(hh) “Firm” means that performance by a Person may be interrupted without liability only to the extent that such performance is prevented by reasons of Force Majeure with respect to such Person asserting Force Majeure.

(ii) “Force Majeure” is defined in Section 13.2.

(jj) “Gas” means natural gas or any other mixture of hydrocarbon gases, or of hydrocarbons and liquids or liquefiables, or of hydrocarbons and non-combustible gases, consisting predominantly of methane.

(kk) “Gas Day” means a period of 24 consecutive hours beginning at 9:00 a.m. CPT on a calendar day and ending at 9:00 a.m. CPT on the next calendar day. The date of the Gas Day shall be the date at its beginning. If, through standardization of business practices in the industry or for any other reason, a Transporter, or the FERC with general applicability, changes the definition of Gas Day, such change shall apply to the definition of Gas Day in this Contract with respect to such Transporter or generally, as applicable.

(ll) “Gas Purchaser” is defined in the Preamble.

(mm) “Gas Purchaser’s Transporter” means the Transporter receiving Gas on Gas Purchaser’s behalf at a Delivery Point.

(nn) “Government Agency” means the United States of America, any state or commonwealth thereof, any local jurisdiction, any political subdivision of any of the foregoing, and any other division of government of any of the foregoing, including but not limited to courts, administrative bodies, departments, commissions, boards, bureaus, agencies, municipalities, or instrumentalities.

(oo) “Imbalance Charges” means any fees, penalties, costs or other charges (in cash or in kind) assessed by a Transporter for failure to satisfy the Transporter’s balancing, scheduling and/or nomination requirements based on such Transporter’s FERC Gas Tariff.

(pp) “Initial Discount Period” means the period from and including the date on which the Delivery Period begins to and including \_\_\_\_\_, \_\_, 202\_.

(qq) “Issuer” is defined in the Preamble.

(rr) “Maturity Date of the Bonds” means the Final Maturity Date of the Bonds, as defined in the Bond Indenture.

(ss) “Mcf” means 1,000 cubic feet of Gas.

(tt) “Minimum Discount” means \_\_\_ cents per MMBtu for the Initial Discount Period and thereafter no less than \_\_\_ cents per MMBtu. Both amounts are inclusive of any projected Annual Refund.

(uu) “MMBtu” means 1,000,000 Btu, which is equivalent to one dekatherm.

(vv) “Month” means the period beginning at the beginning of the first Gas Day of a calendar month and ending at the beginning of the first Gas Day of the next calendar month. The term “Monthly” shall be construed accordingly.

(ww) “Monthly Discount” means (i) for the Initial Discount Period, an amount (when taken together with any Annual Refund) that is not less than the Minimum Discount and is specified in Exhibit D, which Exhibit D shall be provided by Issuer to Gas Purchaser on the Bond Closing Date, and (ii) for each subsequent Reset Period, a portion of the Available Discount for such Reset Period determined by the Calculation Agent pursuant to the Re-Pricing Agreement and set forth in an updated Exhibit D provided by Issuer after such determination.

(xx) “MSES” is defined in the Recitals.

(yy) “Municipal Utility” means any Person that (i) is a governmental person as defined in the implementing regulations under Section 141 of the Code and any successor provision, (ii) owns either or both a Gas distribution utility or an electric distribution utility (or provides Gas or electricity at wholesale to, or that is sold to entities that provide Gas or electricity at wholesale to, governmental Persons that own such utilities), and (iii) agrees in writing to use the Gas purchased by it (or cause such Gas to be used) for a qualifying use as defined in U.S. Treas. Reg. § 1.148-1(e)(2)(iii).

(zz) “Net Remarketing Proceeds” means (i) the actual amounts, if any, received by Issuer from the sale of Gas that Issuer is able to remarket or cause to be remarketed as a result of efforts under Section 4.4 or as a result of Gas Purchaser’s failure to receive Gas pursuant to Section 6.2, less (ii) all directly incurred costs or expenses, including but not limited to remarketing and administrative fees paid to MSES under the Prepaid Gas Agreement, provided that in no event shall the Net Remarketing Proceeds for any Gas exceed the quantity of such Gas multiplied by the result of (A) the Contract Price for such Gas, minus (B) the Project Administration Fee.

(aaa) “Off-System Sales” is defined in Section 23.3(b).

(bbb) “Person” means any individual, public or private corporation, partnership, limited liability company, state, county, district, authority, municipality, political subdivision, instrumentality, partnership, association, firm, trust, estate, or any other entity or organization whatsoever.

(ccc) “Prepaid Gas Agreement” is defined in the Recitals.

(ddd) “Prepaid Project” is defined in the Recitals.

(eee) “Primary Delivery Point” is defined in Section 3.1.

(fff) “Prime Rate” means, for any day of determination, the fluctuating rate per annum equal to the “Prime Rate” listed daily in the “Money Rates” section of The Wall Street Journal on such day (or if such day is not a Business Day, the preceding Business Day), or if The Wall Street Journal is not published on a particular Business Day, then, the “prime rate” published in any other national financial journal or newspaper selected by MSES in its reasonable judgment, and if more than one such rate is listed in the applicable publication, the highest rate shall be used; any change in the Prime Rate shall take effect on the date specified in the announcement of such change.

(ggg) “Priority Commodities” means the Daily Contract Quantities of Gas to be purchased by Gas Purchaser under this Contract, together with Commodities that (i) Purchaser is obligated to take under a long-term agreement, which Commodities either have been purchased (or, with respect to Gas, Gas that has been produced from Gas reserves in the ground which reserves were purchased) by Gas Purchaser or a joint powers authority using the proceeds of bonds, notes, or other obligations, the interest on which is excluded from income for federal income tax purposes pursuant to a long-term prepaid gas purchase agreement, or (ii) with respect to Electricity, is generated using capacity that was constructed using the proceeds of bonds, notes, or other obligations, the interest on which is excluded from income for federal income tax purposes.

(hhh) “Project Administration Fee” means the fee per MMBtu payable monthly by Gas Purchaser as described in Section 4.3.

(iii) “Project Agreements” means the agreements entered into by Issuer under the Prepaid Project.

(jjj) “Project Participants” has the meaning specified in the Bond Indenture.

(kkk) “Qualifying Use Requirements” means, with respect to Gas delivered under this Contract, that such Gas is used (i) for a “qualifying use” as defined in U.S. Treas. Reg. § 1.148-1(e)(2)(iii), (ii) in a manner that will not result in any “private business use” within the meaning of Section 141 of the Code, and (iii) in a manner that is consistent with the Federal Tax Certificate attached as Exhibit E.

(lll) “Quarter” is defined in Section 23.3.



(mmm) “Quarterly Gas Obligation” means, for each Quarter, an amount equal to (A) the Quarterly Remediation Percentage, multiplied by (B) the sum of the Daily Gas Obligations that accrued during such Month.

(nnn) “Quarterly Remarketing Amount” means, for each Quarter, the sum of the Daily Remarketing Amounts that accrued during such Quarter.

(ooo) “Quarterly Remediation Amount” means, for each Quarter, an amount equal to (A) the Quarterly Remediation Percentage, multiplied by (B) the Quarterly Remarketing Amount.

(ppp) “Quarterly Remediation Percentage” means, for each Quarter, an amount equal to (A) the lesser of (1) Disqualified Sale Proceeds that were remediated through the purchase of Gas (other than Priority Commodities) used in compliance with the Qualifying Use Requirements, as reflected in the Quarterly Report delivered by Gas Purchaser, and (2) the Quarterly Remarketing Amount, divided by (B) the Quarterly Remarketing Amount.

(qqq) “Quarterly Report” is defined in Section 23.3.

(rrr) “Rating Agency” has the meaning specified in the Bond Indenture.

(sss) “Refunding Bonds” means any Bonds issued by Issuer under and in accordance with the Indenture to refund the 2019 Series Bonds or any other Bonds then outstanding under the Bond Indenture.

(ttt) “Remarketing Election” is defined in Section 5.3.

(uuu) “Remarketing Election Deadline” means the last date and time by which Gas Purchaser may provide a Remarketing Election Notice, which shall be 4:00 p.m. Central Prevailing Time on the 10th day of the Month (or, if such day is not a Business Day, the next succeeding Business Day) prior to the first Delivery Month of a Reset Period with respect to which a Remarketing Event has occurred.

(vvv) “Remarketing Election Notice” is defined in Section 5.3(b).

(www) “Remarketing Event” is defined in Section 5.3.

(xxx) “Re-Pricing Agreement” means the Re-Pricing Agreement, dated as of March \_\_\_, 2019, by and between MSES and Issuer, as amended or supplemented from time to time in accordance with its terms.

(yyy) “Re-Pricing Date” has the meaning set forth in the Re-Pricing Agreement.

(zzz) “Reset Period” means each five-year period (or such longer or shorter period as may be agreed to by Issuer and MSES pursuant to the Re-Pricing Agreement) commencing on the last day of the Initial Period or prior Reset Period, as the case may be, and ending on the fifth anniversary (or such later or earlier anniversary, as the case may be) of such

last day; provided that the final Reset Period shall be the period from the last day of the prior Reset Period to the end of the Delivery Period.

(aaaa) “Transporter” means all Gas gathering or pipeline companies transporting Gas for Issuer or Gas Purchaser upstream or downstream, respectively, of a Delivery Point.

(bbbb) “Trustee” means the Trustee under the Bond Indenture, which initially shall be The Bank of New York Mellon Trust Company, N.A., and its successors as trustee under the Bond Indenture.

(cccc) “Year” means a period of 12 consecutive Months beginning at the beginning of the first day of \_\_\_\_\_ each year and ending immediately prior to the beginning of the first day of November in the next calendar year.

## **ARTICLE II**

### **SERVICE OBLIGATIONS**

2.1. Effective Date. This Contract shall become effective upon the Effective Date and, unless this Contract is terminated early pursuant to Section 2.2, (a) all of Issuer’s and Gas Purchaser’s obligations under this Contract shall be deemed to have been incurred upon the Effective Date, and (b) the delivery of Gas under this Contract shall commence and continue for the Delivery Period (as described in further detail in Section 2.3 below).

2.2. Termination Due to Failure to Issue Bonds or Provide Minimum Discount. Each party shall have a right to terminate this Contract with the effect that this Contract shall be of no further force or effect and the parties shall have no rights or obligations hereunder if (a) the Bonds are not issued on or before [\_\_\_\_], 2019, or (b) Issuer notifies Gas Purchaser that the expected Available Discount for the Initial Period is less than the Minimum Discount.

2.3. Gas Supply Service. Black Belt acknowledges and agrees that Gas Purchaser has a need to acquire Gas supplies for sale to its wholesale municipal gas distribution system members, to its municipal electric distribution system members, and to its electric joint action agency Member on a long-term basis, and that a significant portion of such Gas supplies must be priced with reference to deregulated market prices in order to enable Gas Purchaser to ensure that it may provide sales service at competitive prices. Black Belt understands that Gas Purchaser has asserted that its long-term viability as a Municipal Utility providing an essential public service depends in part upon its ability to receive secure and reliable supplies of Gas on a long-term basis in pre-determined quantities that are priced with reference to deregulated market prices in the form and structure of the Contract Price, and that Gas Purchaser has further asserted that such Contract Price must be at the lowest reasonable level consistent with the maintenance of secure and reliable service. Gas Purchaser has requested Black Belt to provide deliveries of Gas to it consistent with these objectives, and Gas Purchaser understands and acknowledges that Black Belt has undertaken the Prepaid Project in order to meet Gas Purchaser’s request, together with the requests of the other Project Participants, and satisfy Gas Purchaser’s asserted objectives, and agrees that the Prepaid Project does so. Subject to Article V, Issuer shall tender for delivery to Gas Purchaser on a Firm basis, and Gas Purchaser shall purchase and receive from Issuer on a Firm basis, the applicable Daily Contract Quantity of Gas set forth for each Month in Exhibit B. The Parties also recognize

and agree that the Daily Contract Quantities may be reduced in a Reset Period pursuant to the re-pricing methodology described in the Re-Pricing Agreement if necessary to achieve a successful remarketing of the Bonds. The Parties agree further that if, pursuant to the Re-Pricing Agreement, Issuer and the Calculation Agent determine in connection with the establishment of any new Reset Period that: (i) such Reset Period will be the final Reset Period and (ii) such Reset Period will end prior to the end of the original Delivery Period, then (A) Issuer will notify Gas Purchaser, (B) the Delivery Period will be deemed to be modified so that it ends at the end of such Reset Period, and (C) the Daily Contract Quantity for the last Month in such Reset Period may be reduced as provided in the Re-Pricing Agreement.

2.4. Pledge of this Contract. To secure Issuer's obligations under the Bond Indenture, Issuer will pledge its right, title, and interest under this Contract and the revenues to be received under this Contract (other than the revenues attributable to the Project Administration Fee described in Section 4.3). Gas Purchaser acknowledges and agrees that it is Issuer's intent to secure its obligations under the Bond Indenture in such a manner.

### **ARTICLE III** **RECEIPT AND DELIVERY POINTS**

3.1. Delivery Points. All Gas delivered under this Contract, up to the DCQ for each Month, shall be delivered and received at the point[s] of delivery specified in Exhibit A (each a "Primary Delivery Point") or to any other point of delivery (each an "Alternate Delivery Point") that has been mutually agreed to in writing by Issuer and Gas Purchaser (each Primary Delivery Point or Alternate Delivery Point, if specified, being a "Delivery Point").

3.2. Transfer of Title. Gas Purchaser shall take title to all Gas, up to the DCQ for each Month, delivered to it by Issuer at the applicable Delivery Point(s) and shall own such Gas and shall assume all risk of loss following such transfer at the applicable Delivery Point(s).

3.3. Priority of Gas. Gas Purchaser covenants and agrees to take the Daily Contract Quantity delivered by Issuer under this Contract (a) in priority over and in preference to all other Gas available to Gas purchaser that is not Priority Gas, and (b) in priority over and in preference to all other Priority Gas that first commences deliveries after the initiation of deliveries under this Contract. Exhibit I shows the schedule of Priority Gas from other prepayment transactions or reserve acquisitions that commenced deliveries prior to the Gas deliveries under this Contract. Upon a Remarketing Event (as defined in Section 5.3) under the Prepaid Gas Agreement with respect to the Daily Contract Quantity, Gas Purchaser will be relieved of its obligation to purchase and take delivery of Gas under this Contract as to those quantities of Gas to the extent of the Remarketing Event.

### **ARTICLE IV** **PRICING OF GAS SUPPLY SERVICES**

4.1. Charge Per MMBtu Delivered. For each MMBtu of Gas delivered by Issuer to Gas Purchaser at the Delivery Points, Gas Purchaser shall pay Issuer the index price determined pursuant to Exhibit C (or any substitute index price determined under Section 4.2) for the applicable Month, less the Monthly Discount (the "Contract Price"). Gas Purchaser shall not be

charged for any Gas that is not tendered for delivery by Issuer. Notwithstanding the foregoing, the Parties recognize and agree that the pricing specified in Section 5.2 shall apply to any Gas deliveries made by Issuer following a Failed Remarketing.

4.2. Substitute Index Price; Corrections to Index Prices.

(a) If the source of any publication used to determine the index price used in the Contract Price should cease to publish the relevant prices or should cease to be published entirely, the index price shall be the price per MMBtu, stated in U.S. dollars, for Gas to be delivered at the Delivery Point during the applicable Month as set forth in an alternative index as determined under Section 18.11 of the Prepaid Gas Agreement. Issuer shall provide Gas Purchaser the opportunity to offer its recommendations and other input to Issuer for Issuer's use in the process under Section 18.11 of the Prepaid Gas Agreement.

(b) If a value published for any rate or index used or to be used in this Contract is subsequently corrected and the correction is published or announced by the Person responsible for that publication or announcement within 30 days after the original publication or announcement, either Party may notify the other Party of (i) that correction and (ii) the amount (if any) that is payable as a result of that correction. If, not later than 30 days after publication or announcement of that correction, a Party gives notice that an amount is so payable, the Party that originally either received or retained such amount shall, not later than five Business Days after the effectiveness of that notice, pay, subject to any other applicable provisions of this Contract, to the other Party that amount.

4.3. Project Administration Fee. Issuer shall bill and Gas Purchaser shall pay each Month, as part of the Monthly invoice described in Article XI, the Project Administration Fee per MMBtu of its Daily Contract Quantity for such Month. The total Monthly invoice with respect to the Project Administration Fee shall equal the product of (i) the Daily Contract Quantity for the Month of Gas deliveries, (ii) the number of days in such Month, and (iii) the Project Administration Fee. The Project Administration Fee shall equal three cents (\$0.03) for all Months during the Delivery Period where the Available Discount is less than or equal to 40 cents per MMBtu and four cents (\$0.04) for all Months during the Delivery Period where the Available Discount is greater than 40 cents per MMBtu.

4.4. Remarketing Upon Load Loss. In the event Gas Purchaser does not require all or any portion of the DCQ that it is obligated to purchase under this Contract as a result of a temporary loss of load on its system, Issuer shall, upon reasonable notice from Gas Purchaser, use Commercially Reasonable Efforts, to the extent permitted in the Prepaid Gas Agreement, to arrange for the sale of such quantities by MSES to another purchaser(s). If such sales are made, Issuer shall credit the Net Remarketing Proceeds against the amount owed by Gas Purchaser.

4.5. Annual Refunds. During the term of this Contract, promptly following completion of the annual audit of Issuer's financial statements at the end of each fiscal year (currently the twelve-month period ending June 30), Issuer shall compare its revenues (as determined in accordance with the Bond Indenture) and expenses under the Prepaid Project for that fiscal year. For purposes of such annual comparison, Issuer's expenses shall include: (a) its expenses incurred in obtaining Gas supply under the Prepaid Project; (b) its administrative, legal, and accounting

expenses directly incurred in connection with or properly allocable to the Prepaid Project, including the administration of this Contract and all other contracts for the sale of Gas obtained under the Prepaid Project; (c) debt service on the Bonds, including payments under any interest rate swap or hedge agreement; (d) any replenishment of draws made upon any working capital fund associated with the Prepaid Project; (e) any deposits required to be made by Issuer into any debt service reserve or other reserve or contingency fund or funds established with respect to the Bonds; (f) any fees or other amounts due to any provider of credit support for the Bonds; (g) payments under any commodity price swap or hedge agreement entered into in connection with the Prepaid Project; and (h) any other similar costs and expenses. If this annual comparison demonstrates that such revenues exceeded such expenses during the applicable fiscal year and there are amounts on deposit in the fund established by the Bond Indenture available for such purpose, then Issuer shall make refunds to Buyer and the other Project Participants in the amount available after making allowances for any necessary and appropriate reserves and contingencies (as provided in the foregoing clause (e)), including but not limited to amounts deemed reasonably necessary by the Project Management Committee (and approved by Issuer's Board of Directors) to fund any working capital reserve and to reserve or account for unfunded liabilities, including future sinking fund or other principal amortization of the Bonds. The amount available for refund shall be allocated among and paid to Buyer and the other Project Participants in proportion to their respective purchases for such fiscal year. As of the Effective Date, the projected Annual Refund for the Initial Discount Period is \_\_\_ cents per MMBtu.

#### 4.6 Permanent Loss of Gas Need.

(a) In the event of permanent loss of need for Gas on any of Gas Purchaser's local distribution company ("LDC") systems participating in the Prepaid Project through Gas Purchaser due to (i) the permanent cessation of all or part of the operations of a large industrial customer or (ii) the sale of the relevant LDC system to any entity other than a governmental Person, Gas Purchaser may give notice of the permanent reduction, in an amount equal to such loss of need, of such quantities from its Daily Contract Quantity for the Remaining Term. If the Issuer, subject to Section 3.3, is reasonably satisfied that such loss of need for Gas is permanent, which determination shall not be unreasonably withheld, conditioned, or delayed, the Issuer will reduce Gas Purchaser's DCQ through the Remaining Term accordingly.

(b) In the event of permanent loss of need for Gas by any of Gas Purchaser's municipal electric joint action agencies participating in the Prepaid Project through Gas Purchaser due to the permanent loss of gas-fired electric generation facilities (evidenced by the municipal electric joint action agency's Executive Committee or Board of Directors (or other denominated governing body) taking such action which has the effect of approving, consenting to, or acquiescing in the cessation of operation of natural gas-fired generation for the Remaining Term), Gas Purchaser may give notice of the permanent reduction of such quantities from its Daily Contract Quantity for the Remaining Term. If the Issuer, subject to Section 3.3, is reasonably satisfied that such loss of need for Gas (as described in this Section 4.6(b)) is permanent, which determination shall not be unreasonably withheld, conditioned, or delayed, the Issuer will reduce Gas Purchaser's DCQ through the Remaining Term accordingly.

(c) As used in this Section 4.6, "permanent" means a period of time, at any time, that lasts for at least as long as the Remaining Term.

**ARTICLE V**  
**TERM**

5.1. Primary Term. This Contract shall be effective as of the Effective Date and shall be implemented to effectuate purchases and sales of Gas under this Contract for deliveries commencing on the first day of the Delivery Period. Unless earlier terminated in accordance with Section 2.2 or Section 5.2, this Contract thereafter shall remain in full force and effect for a primary term ending on the Maturity Date of the Bonds, subject to all winding up arrangements as described in Section 5.4 and to the provisions of Section 5.2.

5.2. Early Termination Before End of Primary Term. Notwithstanding Section 5.1, Gas Purchaser acknowledges and agrees that (i) in the event the Prepaid Gas Agreement terminates prior to the end of the primary term of this Contract, this Contract shall terminate on the date of early termination of the Prepaid Gas Agreement (subject to all winding up arrangements) and (ii) Issuer's obligation to deliver Gas under this Contract shall terminate upon the termination of deliveries of Gas to Issuer under the Prepaid Gas Agreement. In addition, Gas Purchaser acknowledges and agrees that this Contract may terminate early as a result of a default by Gas Purchaser under Article XVI. Issuer shall provide notice to Gas Purchaser of any early termination date. The Parties recognize and agree that, in the event that the Prepaid Gas Agreement terminates because of a Failed Remarketing of the Bonds that occurs in the first Month of a Reset Period, Issuer shall deliver Gas under this Contract for the remainder of such first Month, and, notwithstanding anything in this Contract to the contrary, the Contract Price for all Gas deliveries made by Issuer during such first Month shall be the applicable index price identified for deliveries in Exhibit C with no Monthly Discount and there shall be no Annual Refunds associated with such deliveries.

5.3. Remarketing Election; Suspension and Resumption of Deliveries.

(a) Remarketing Event. For each Reset Period, at least ten (10) days prior to the applicable Remarketing Election Deadline, Issuer shall provide to Gas Purchaser a written notice setting forth the duration of such Reset Period and the estimated Available Discount for such Reset Period. In the event such estimated Available Discount for a Reset Period is not equal to or greater than the Minimum Discount for that Reset Period (a "Remarketing Event"), such notice shall also state (i) that a Remarketing Event has occurred, (ii) the applicable Remarketing Election Deadline, and (iii) that Gas Purchaser, and each other Project Participant, may (A) continue to purchase and receive its Daily Contract Quantity during such Reset Period at a Contract Price that reflects the Monthly Discount portion of the Available Discount (as finally determined as hereinafter described), plus Annual Refunds, if any, as described in Section 4.5, or (B) elect that such Daily Contract Quantity be remarketed for such Reset Period (a "Remarketing Election") by providing a Remarketing Election Notice prior to the Remarketing Election Deadline. The Parties acknowledge that the determination of the Available Discount for a Reset Period under the Re-Pricing Agreement will be through an iterative process that may commence with informal, non-binding communications that shall not constitute a written notice as provided for above, when Issuer may provide preliminary non-binding estimates of the Available Discount for a Reset Period.

(b) Remarketing Election. If Gas Purchaser elects to have its Daily Contract Quantity remarketed for such Reset Period following the occurrence of a Remarketing Event, Gas Purchaser must provide written notice of such Remarketing Election to Issuer, MSES and the Trustee (its “Remarketing Election Notice”) not later than the applicable Remarketing Election Deadline. A Remarketing Election Notice shall be in substantially the form attached hereto as Exhibit G. In the event Gas Purchaser provides a Remarketing Election Notice on or prior to the applicable Remarketing Election Deadline, the Parties’ obligations to deliver and receive Gas shall be suspended for the duration of such Reset Period and the Daily Contract Quantity for such Reset Period shall be zero MMBtu per day.

(c) Extension of Remarketing Election Deadline. If a Remarketing Event has occurred and Gas Purchaser has not made a Remarketing Election, but one or more of the other Project Participants has made a Remarketing Election, the estimated Available Discount may be required to be recalculated pursuant to the Re-Pricing Agreement. In such case Issuer shall provide such new estimated Available Discount to Gas Purchaser promptly in writing, and the Remarketing Election Deadline shall be extended to the third Business Day following the date of such notice.

(d) Final Determination of Available Discount. The Parties acknowledge and agree that the final Available Discount for any Reset Period following the Initial Period will be determined on the applicable Re-Pricing Date, and that such Available Discount may differ from the estimate or estimates of such Available Discount provided to Gas Purchaser and the other Project Participants prior to the applicable Remarketing Election Deadline. Accordingly, the Parties agree that:

(i) the Available Discount for any Reset Period will not be less than the Minimum Discount applicable to such Reset Period, unless (A) Issuer has provided notice of such Remarketing Event to Gas Purchaser in accordance with Section 5.3(a), and (B) Gas Purchaser has not provided a Remarketing Election Notice prior to the applicable Remarketing Election Deadline (as the same may be extended pursuant to Section 5.3(c)); and

(ii) if Gas Purchaser has not made a Remarketing Election prior to the applicable Remarketing Election Deadline (as the same may be extended pursuant to Section 5.3(c)), Gas Purchaser shall be deemed to have elected to continue to purchase and receive its Daily Contract Quantity at a Contract Price that reflects the Monthly Discount portion of the Available Discount as finally determined on the applicable Re-Pricing Date, plus the right to its share of Annual Refunds, if any, and all delivery and purchase obligations under this Contract shall continue in full force and effect for the applicable Reset Period.

(e) Resumption of Deliveries. In the event that Gas deliveries are suspended following a Remarketing Election made by Gas Purchaser in accordance with this Section 5.3, the Parties acknowledge and agree that deliveries shall resume if, in connection with any future Reset Period, (i) the Available Discount calculated for such Reset Period is equal to or exceeds the Minimum Discount applicable to such Reset Period, or (ii) Issuer and Gas Purchaser mutually agree to resume deliveries for such future Reset Period with a discount less than the applicable Minimum Discount. Issuer shall provide notice setting forth the duration of the Reset Period and

the estimated Available Discount for such Reset Period no later than at least ten (10) days prior to the applicable Remarketing Election Deadline for such Reset Period. The Parties acknowledge and agree that the final Available Discount will be determined on the applicable Re-Pricing Date, and that such Available Discount may differ from the estimate or estimates of such Available Discount with the effect described in Section 5.3(d).

5.4. Winding Up Arrangements. The expiration or termination of this Contract shall not relieve either Party of (a) any unfulfilled obligation or undischarged liability of such Party on the date of such termination, (b) the consequences of any breach or default of any warranty or covenant contained in this Contract, (c) its obligation to effectuate all winding up arrangements or (d) its obligation to take any other actions as may be necessary to effectuate all of the terms of this Contract. All obligations and liabilities described in the preceding sentence of this Section 5.4, and the applicable provisions of this Contract creating or relating to such obligations and liabilities, shall survive such expiration or termination. For the avoidance of doubt, Gas Purchaser shall not be responsible for the payment of more than the Contract Price for Gas deliveries as a result of any winding up arrangements.

## **ARTICLE VI** **FAILURE TO PERFORM**

6.1. Cost of Replacement Gas. Except in cases of Force Majeure, for each MMBtu that Issuer is obligated to deliver to Gas Purchaser under this Contract but fails to deliver, Issuer shall pay to Gas Purchaser an amount equal to the difference between the price per MMBtu which would have been applicable to the undelivered Gas under Article IV and any higher price per MMBtu which Gas Purchaser actually incurred to obtain an equivalent quantity of replacement Gas, including but not limited to any incremental charges associated with the transportation and storage of such replacement Gas, exercising Commercially Reasonable Efforts to obtain such replacement Gas and alternate transportation at a Commercially Reasonable price. For purposes of this Section 6.1, replacement Gas includes without limitation Gas withdrawn from storage, liquefied natural gas, and peak shaving, and costs associated with obtaining such Gas include without limitation storage withdrawal and injection costs, storage fuel, and liquefaction and vaporization costs for stored liquefied natural gas; provided, however, that for purposes of the foregoing the price of any such replacement Gas withdrawn from storage shall be the market price applicable to such Gas at the time of the withdrawal.

6.2. Obligation to Take the Daily Quantity. If on any Gas Day Issuer tenders the Daily Contract Quantity for delivery to Gas Purchaser and Gas Purchaser fails to take the Daily Contract Quantity, Gas Purchaser shall remain obligated to pay Issuer the Contract Price for the Daily Contract Quantity plus the Project Administration Fee. Issuer shall credit to Gas Purchaser's account any Net Remarketing Proceeds for such Gas.

6.3. No Consequential or Special Damages. Neither Party shall be liable for consequential, incidental, special, or punitive damages or losses which may be suffered by the other as a result of the failure to deliver or take or pay for the required quantities of Gas under this Contract.



6.4. Imbalances. The Parties shall use Commercially Reasonable Efforts to avoid the imposition of any Imbalance Charges. If Issuer or Gas Purchaser receives an invoice from a Transporter that includes Imbalance Charges related to the obligations of either Party under this Contract, the Parties shall determine the validity as well as the cause of such Imbalance Charges. If the Imbalance Charges were incurred as a result of Gas Purchaser's takes of quantities of Gas greater than or less than the Daily Contract Quantity at any Delivery Point, then Gas Purchaser shall pay for such Imbalance Charges or reimburse Issuer for such Imbalance Charges paid by Issuer. If the Imbalance Charges were incurred as a result of Issuer's deliveries of quantities of Gas greater than or less than the Daily Contract Quantities at any Delivery Point, then Issuer shall pay for such Imbalance Charges or reimburse Gas Purchaser for such Imbalance Charges paid by Gas Purchaser. Notwithstanding the provisions of Sections 6.1 and 6.2 the Parties may mutually agree to make up any differences between the Daily Contract Quantity and the quantity delivered or taken on any Gas Day in kind.

## **ARTICLE VII**

### **RESPONSIBILITY FOR TRANSPORTATION**

Issuer shall make all arrangements for transportation services required to effect the delivery of the Daily Contract Quantity to the Delivery Points. Gas Purchaser shall take all actions and be responsible for making all arrangements required to effect the transportation of the Daily Contract Quantity from the Delivery Points, including but not limited to all nominations, scheduling, balancing, and associated management and administrative functions. Issuer shall bear all costs and expenses of transportation prior to the delivery of the Daily Contract Quantity at the Delivery Points, except as provided in this Contract. Gas Purchaser shall bear all costs of transportation at and after the delivery of Gas to the Delivery Points.

## **ARTICLE VIII**

### **DELIVERY REQUIREMENTS**

8.1. Specifications. All Gas delivered under this Contract shall be merchantable and shall, upon delivery, conform to the quality specifications and heating value specified in Gas Purchaser's Transporter's FERC Gas Tariff.

8.2. Pressure. All Gas sold by Issuer to Gas Purchaser under this Contract shall be delivered to Gas Purchaser at the pressure maintained from time to time in Gas Purchaser's Transporter's facilities at the Delivery Points.

8.3. Measurement. Gas sold under this Contract shall be measured through Gas Purchaser's Transporter's existing measurement facilities at the Delivery Points in accordance with the provisions of such Transporter's FERC Gas Tariff. The unit of volume for measurement of Gas delivered under this Contract shall be one Mcf or otherwise as consistent with Transporter's measurement at the Delivery Points. The sales unit of the Gas shall be one MMBtu, established by converting Mcfs measured at the Delivery Points to MMBtus according to the Btu content determined by Transporter on a dry basis at the Delivery Points under Transporter's FERC Gas Tariff. With respect to any measurement of Gas delivered or received under this Contract at any Delivery Point, the measurement of such Gas (including the definition of Btu used in making such measurement) by the operator of such Delivery Point shall be conclusive.

**ARTICLE IX**  
**TITLE AND RISK OF LOSS**

Issuer warrants the title to all Gas sold to Gas Purchaser under this Contract. Transfer of custody and title to Gas sold under this Contract shall pass to and vest in Gas Purchaser at the Delivery Point. As between the Parties, Issuer shall be deemed to be in exclusive control and possession of Gas delivered under this Contract prior to the time of delivery to Gas Purchaser at the Delivery Point, and Gas Purchaser shall be deemed to be in exclusive control and possession of Gas delivered under this Contract at and after delivery at the Delivery Point.

**ARTICLE X**  
**ROYALTIES AND TAXES**

10.1. Royalties and Other Charges. Issuer shall pay or cause to be paid any royalties or other sums due on the gathering, handling, and transportation of Gas sold under this Contract prior to its delivery to Gas Purchaser at the Delivery Point.

10.2. Taxes. The price for Gas sold to Gas Purchaser under this Contract is inclusive of all production, severance, ad valorem, or similar taxes levied on the production or transportation of the Gas prior to its delivery to Gas Purchaser at the Delivery Point, and all such taxes shall be borne and paid exclusively by Issuer; provided, however, that if Gas Purchaser is required to remit such taxes to the collecting authority, Gas Purchaser shall do so and Issuer shall credit an amount equal to the taxes so paid against payments otherwise due to Issuer under this Contract. The price for Gas sold to Gas Purchaser under this Contract does not include any federal, tribal, state, or local sales, use, consumption, utility, storage, greenhouse gas, carbon, license, ad valorem, franchise, or similar taxes imposed by any taxing authority on the sale to, or use by, Gas Purchaser of Gas sold under this Contract, including without limitation ad valorem taxes on Gas held in storage by Gas Purchaser. Gas Purchaser shall be responsible for the payment of any such taxes and for completing and filing all required forms.

**ARTICLE XI**  
**BILLING AND PAYMENT**

11.1. Timing. Not later than ten days following the end of the Month of delivery, Issuer or its designee shall provide a Monthly billing statement to Gas Purchaser of the amount due for Gas tendered for delivery under this Contract. Such billing statement shall be provided to Gas Purchaser by hand delivery, first-class mail, express courier, electronic transmission, or facsimile transmission to the address or facsimile number set forth for Gas Purchaser in ARTICLE XVIII. Gas Purchaser shall remit such amounts due to Issuer by wire transfer in immediately available funds on or before the 20th day of the Month following the Month of delivery, or if such day is not a Business Day, the immediately preceding Business Day. If the Billing Statement indicates an amount due from Issuer, then Issuer shall remit such amount to Buyer by wire transfer (pursuant to Buyer's instructions), in immediately available funds, on or before the 28th day of the Month following delivery, or if such day is not a Business Day, the following Business Day.

11.2. Late Payment. In the event Gas Purchaser fails to pay an amount when due hereunder, interest thereon shall accrue at a rate of interest per annum equal to the lesser of (i) the

Prime Rate plus two percent or (ii) the maximum rate permitted by law, in either case from the due date until paid. If Gas Purchaser disputes the appropriateness of any charge or calculation in any billing statement, Gas Purchaser, within the time provided for payment, shall notify Issuer of the existence of and basis for such dispute and shall pay all amounts billed by Issuer, including any amounts in dispute. If it is ultimately determined that Gas Purchaser did not owe the disputed amount, by agreement or by a final order of a court of competent jurisdiction which is not subject to appeal or concerning which any right to appeal has been waived or which the Parties have irrevocably agreed not to appeal, Issuer shall pay Gas Purchaser that amount plus interest as calculated in accordance with this Section 11.2.

11.3. Audit Rights. Each Party shall have the right, at its own expense, to examine and audit at any reasonable time the books, records, measurement data, charts, and telemetry data of the other Party to the extent, but only to the extent, necessary to verify the accuracy of any statements or charges made under or pursuant to this Contract. Any inaccuracy shall be corrected promptly when discovered; provided, however, that neither Party shall be required to maintain books, records, measurement data, charts, or telemetry data for a period of more than two calendar years following the end of the calendar year to which they are applicable. Neither Party shall have a right to question or contest any charge or credit if the matter is not called to the attention of the other Party in writing within 24 Months of the date of the charge or credit in question.

11.4. Special Obligations and Covenants of Gas Purchaser. Gas Purchaser's obligation to make the payments it is required to make under this Contract is a several obligation and not a joint obligation with the obligations of any other Project Participant under its contract with Issuer for the purchase of Gas under the Prepaid Project. Gas Purchaser further covenants and agrees:

(a) to make such payments from its operating revenues, and as a charge against such revenues, as an operating expense and a cost of purchased Gas; provided, however, that Gas Purchaser, in its discretion, may apply any legally available monies to the payment of amounts due under this Contract;

(b) that it will establish, maintain, and collect rates and charges for the services it furnishes so as to provide revenues sufficient, together with other available system revenues, to enable Gas Purchaser to pay to Issuer all amounts payable under this Contract and to pay all other amounts payable from its operating revenues and to maintain any required reserves;

(c) that it shall not furnish or supply Gas services free of charge to any person, firm, corporation, association, or other entity, public or private, except any such service free of charge that Gas Purchaser is supplying as of the date of this Contract, as has been specifically identified by Gas Purchaser to Issuer in writing, and that it shall promptly enforce the payment of any and all material accounts owing to Gas Purchaser for the sale of Gas or the provision of services to its customers;

(d) that any future bond issue undertaken by Gas Purchaser, or in connection with any other financing or financial transaction, Gas Purchaser shall not pledge or encumber the revenues of its business operations through a gross revenue pledge or in any other way which creates a prior or superior obligation to its obligation to make payments under this Contract; and

(e) that it shall not take an action to institute an Event of Insolvency with respect to Gas Purchaser.

11.5. Financial Responsibility. When reasonable grounds for insecurity of payments due under this Contract arise, Issuer may demand, and Gas Purchaser shall provide within five Business Days if demanded, adequate assurance of performance. Reasonable grounds include but are not limited to the occurrence of an Event of Insolvency with respect to Gas Purchaser or the downgrading of Gas Purchaser's credit rating, if any, by a Rating Agency to a level below investment grade, and/or such facts and circumstances which would constitute reasonable grounds for insecurity under the Uniform Commercial Code in effect in the State of Alabama. Adequate assurance shall mean sufficient security in the form and for a term reasonably specified by Issuer, including but not limited to a standby irrevocable letter of credit, a prepayment, a deposit to an escrow account, or a performance bond or guaranty by a creditworthy entity. The Parties agree that in the event Gas Purchaser fails to provide such adequate assurance as demanded, Issuer shall have the right to suspend further deliveries of Gas to Gas Purchaser under this Contract on three business days written notice and shall not be obligated to restore such deliveries until the first day of the Month after such demand has been satisfied; provided, however, that Issuer shall not be obligated to restore such deliveries notwithstanding the satisfaction of such demand until the completion of the term of deliveries to any replacement sales customer to which MSES has remarketed the Gas on behalf of Issuer. The Parties agree that once an event requiring adequate assurance under this Section 11.5 is cured, the adequate assurance provided, if any, shall be returned to Gas Purchaser within a reasonable period.

11.6. No Set-Off. Payment for all amounts set forth in a billing statement provided to Gas Purchaser pursuant to Section 11.1 shall be made without set-off or counterclaim of any kind.

## **ARTICLE XII LAWS AND REGULATIONS**

This Contract is subject to all valid laws, orders, rules, regulations, or other governmental actions of any duly constituted federal, state, or local governmental authority, to the extent such laws, orders, rules, and regulations are applicable and effective from time to time; provided, however, that no such action by Gas Purchaser's or Issuer's governing body may affect that Party's obligations and rights under this Contract.

## **ARTICLE XIII FORCE MAJEURE**

13.1. Suspension of Obligations. Except with regard to a Party's obligation to make payments under this Contract, neither Party shall be liable to the other for failure to perform an obligation to the extent such failure was caused by Force Majeure, as defined in Section 13.2.

13.2. Force Majeure Defined. The term "Force Majeure" as employed herein means any cause not reasonably within the control of the Party claiming suspension, as further defined in this Section 13.2. The term "Force Majeure" shall include, but not be limited to, the following: (i) physical events such as acts of God, landslides, lightning, earthquakes, fires, storms or storm warnings, such as hurricanes or tornadoes, which result in evacuation of the affected area, floods, washouts, explosions, or breakage of or accident or necessity of repairs to machinery or equipment

or lines of pipe; (ii) weather related events affecting an entire geographic region, such as low temperatures which cause freezing or failure of wells or lines of pipe; (iii) interruption and/or curtailment of transportation and/or storage by Transporters (provided that if the affected Party is using interruptible or secondary Firm transportation, only if primary, in-path, Firm transportation is also curtailed by the same event, or, if the relevant Transporter does not curtail based on path, if primary Firm transportation is also curtailed); (iv) acts of others such as strikes, lockouts or other industrial disturbances, riots, sabotage, insurrections, wars or acts of terror; (v) governmental actions, such as necessity for compliance with any court order, law, statute, ordinance, regulation, or policy having the effect of law promulgated by a Government Agency having jurisdiction; and (vi) any invocation of Force Majeure by MSES under the Prepaid Gas Agreement. Issuer and Gas Purchaser shall make Commercially Reasonable Efforts to avoid the adverse impacts of a Force Majeure event or occurrence and to resolve the event or occurrence once it has occurred in order to resume performance.

13.3. Force Majeure Exclusions. Neither Party shall be entitled to the benefits of a claim of Force Majeure to the extent performance is affected by any or all of the following circumstances: (i) the Party claiming excuse failed to remedy the condition and to resume the performance of its obligations with reasonable dispatch; (ii) economic hardship, to include, without limitation, Issuer's ability to sell Gas at a higher or more advantageous price, Gas Purchaser's ability to purchase Gas at a lower or more advantageous price, or a Government Agency disallowing, in whole or in part, the pass-through of costs resulting from this Contract; or (iii) the loss of Gas Purchaser's markets or Gas Purchaser's inability to resell Gas purchased under this Contract, except, in either case, as provided in Section 13.2. Gas Purchaser shall not be entitled to the benefit of the provisions of Force Majeure to the extent performance is adversely affected by any action taken by Gas Purchaser in its governmental capacity. The Party claiming Force Majeure shall not be excused from its responsibility for Imbalance Charges.

13.4. Settlement of Labor Disputes. Notwithstanding anything to the contrary in this Contract, the Parties agree that the settlement of strikes, lockouts or other industrial disturbances shall be within the sole discretion of the Party experiencing such disturbance.

13.5. Force Majeure Procedure. The Party whose performance is prevented by Force Majeure must provide notice to the other Party as soon as practicable. Initial notice may be given orally; however, written notice with reasonably full particulars of the event or occurrence is required as soon as reasonably possible. Upon providing written notice of Force Majeure to the other Party, the affected Party will be relieved of its obligation, from the onset of Force Majeure, to make or accept delivery of Gas, as applicable, to the extent and for the duration of Force Majeure, and neither Party shall be deemed to have failed in such obligations to the other during such occurrence or event.

#### **ARTICLE XIV** **DEFAULT**

14.1. Failure by Gas Purchaser to Make Payments Due. Failure by Gas Purchaser to make to Issuer when due any of the payments for which provision is made in this Contract shall constitute a default on the part of Gas Purchaser.

14.2. Enforcement and Right to Discontinue Service. In the event of any default under Section 14.1, Issuer shall have the right to recover from Gas Purchaser any amount in default. In enforcement of any such right of recovery, Issuer may bring any suit, action, or proceeding at law or in equity, including without limitation mandamus, injunction and action for specific performance, as may be available to Issuer to enforce any covenant, agreement, or obligation to make any payment for which provision is made in this Contract, and Issuer in its sole discretion may, upon three business days written notice to Gas Purchaser, cease and discontinue providing delivery of all or any portion of the Gas otherwise to be delivered to Gas Purchaser at the Delivery Points under this Contract. In the event Issuer takes all or any of the actions authorized by this Section 14.2, Gas Purchaser shall remain fully liable for payment of all amounts in default and shall not be relieved of any of its payment obligations under this Contract.

14.3. Reinstatement of Service. If Issuer exercises its right to discontinue providing Gas deliveries to Gas Purchaser under Section 14.2, such Gas deliveries may only be reinstated, at a time to be determined by Issuer, upon (i) payment in full by Gas Purchaser of all amounts then due and payable under this Contract and (ii) payment in advance by Gas Purchaser at the beginning of each Month of amounts estimated by Issuer to be due to Issuer for the future delivery of Gas under this Contract for such Month. Issuer may continue to require payment in advance after the reinstatement of service under this Contract for such period of time as Issuer in its sole discretion may determine is appropriate.

14.4. Other Default by Gas Purchaser. In the event of a failure by Gas Purchaser to establish, maintain, or collect rates or charges adequate to provide revenues sufficient to enable Gas Purchaser to pay all amounts due to Issuer under this Contract, or in the event of a failure by Gas Purchaser to take from Issuer its Gas supplies in accordance with the provisions of this Contract, or in the event of any default by Gas Purchaser under any other covenant, agreement, or obligation in this Contract, Issuer (without limiting the provisions of ) may bring any suit, action, or proceeding at law or in equity, including without limitation mandamus, injunction, and action for specific performance, as may be available to Issuer to enforce any covenant, agreement, or obligation of Gas Purchaser in this Contract. In addition to the foregoing remedies (and without limiting any other provisions of this Contract), if Gas Purchaser fails to accept from Issuer any of the Daily Contract Quantity tendered for delivery under this Contract, Issuer shall have the right to sell, or cause MSES to sell, such Gas to third parties.

14.5. Default by Issuer. In the event of a default by Issuer under any covenant, agreement, or obligation in this Contract, Gas Purchaser (without limiting the provisions of Section 14.6) may bring any suit, action, or proceeding at law or in equity, including without limitation mandamus, injunction, and action for specific performance, as may be available to Gas Purchaser to enforce any covenant, agreement, or obligation in this Contract against Issuer.

14.6. Arbitration and Mediation. Notwithstanding any other provision of this Contract to the contrary, the Parties by mutual agreement may agree to mediate or arbitrate any dispute that arises under this Contract.

14.7. Third-Party Beneficiaries. Except as provided in this Section 14.7, it is specifically agreed that there are no third-party beneficiaries of this Contract and that this Contract shall not impart any rights enforceable by any Person not a party to this Contract. Gas Purchaser

acknowledges and agrees that (i) Issuer will pledge and assign its rights, title and interest in this Contract and the amounts payable by Gas Purchaser under this Contract (other than amounts payable in respect of the Project Administration Fee under Section 4.3) to secure Issuer's obligations under the Bond Indenture, (ii) the Trustee shall be a third-party beneficiary of this Contract with the right to enforce Gas Purchaser's obligations under this Contract, (iii) the Trustee or any receiver appointed under the Bond Indenture shall have the right to perform all obligations of Issuer under this Contract, and (iv) in the event of a default in payments by Gas Purchaser under this Contract, (a) MSES may, to the extent provided for in, and in accordance with, the Receivables Purchase Agreement (as defined in the Bond Indenture), take assignment from Issuer of receivables owed by Gas Purchaser to Issuer under this Contract, and shall thereafter have all rights of collection with respect to such receivables and interest accrued thereon, and (b) if such receivables are not so assigned, the Commodity Swap Counterparty shall have the right to pursue collection of such receivables to the extent of any non-payment by Issuer under the Commodity Swap that was caused by Gas Purchaser's payment default.

**ARTICLE XV**  
**[RESERVED]**

**ARTICLE XVI**  
**WAIVERS**

No waiver by either Issuer or Gas Purchaser of any default of the other under this Contract shall operate as a waiver of any future default, whether of like or different character or nature.

**ARTICLE XVII**  
**SUCCESSION AND ASSIGNMENT**

The terms and provisions of this Contract shall extend to and be binding upon the Parties and their respective successors, assigns, and legal representatives; provided, however, that neither Party may assign this Contract or its rights and interests, in whole or in part, under this Contract as set forth in this Article XVII without the prior written consent of the other Party, which shall not be unreasonably withheld, except that Issuer may assign its interests under this Contract as described in Section 14.7. Prior to assigning this Contract, Gas Purchaser shall deliver to Issuer (i) written confirmation from each of the Applicable Rating Agencies, provided that such agency has rated and continues to rate the Bonds, that the assignment will not result in a reduction, qualification, or withdrawal of the then-current ratings assigned by the Applicable Rating Agencies to the Bonds; or (ii) written confirmation from each of the Applicable Rating Agencies, that the assignee has an outstanding long-term senior, unsecured, unenhanced debt rating equivalent to or higher than the ratings assigned by the Applicable Rating Agencies to the Bonds. Whenever an assignment or a transfer of a Party's interest in this Contract is requested to be made with the written consent of the other Party, the assigning or transferring Party's assignee or transferee shall expressly agree to assume, in writing, the duties and obligations under this Contract of the assigning or transferring Party. Upon the agreement of a Party to any such assignment or transfer, the assigning or transferring Party shall furnish or cause to be furnished to the other Party a true and correct copy of such assignment or transfer and assumption of duties and obligations.

**ARTICLE XVIII**  
**NOTICES**

Except as is otherwise specifically provided in this Contract, any notice, request, demand, or statement provided for in this Contract must be given in writing and delivered in person, by United States mail, or by express courier to the respective Parties at the addresses shown below or at such other addresses as may hereafter be furnished to the other Party in writing, and all payments due from Gas Purchaser under this Contract shall be made by wire transfer to the account for payments set forth below:

Issuer:

The Black Belt Energy Gas District  
P.O. Box 220  
2003 College Avenue  
Jackson, Alabama 36545  
Attention: Kelly Henry  
Telephone: (251) 751-8635  
Fax: (251) 246-2479  
Email: khenry@blackbeltenergy.com

Payments:

The Bank of New York Mellon Trust Company  
ABA #: [\_\_\_\_\_]   
A/C #: [\_\_\_\_\_]   
Re: [\_\_\_\_\_]   
Attn: [\_\_\_\_\_]¹

Gas Purchaser:

[\_\_\_\_\_]   
[\_\_\_\_\_]   
[\_\_\_\_\_]   
[\_\_\_\_\_]²

Payments:

By Wire Transfer: [\_\_\_\_\_]   
Account No.: [\_\_\_\_\_]   
ABA No. [\_\_\_\_\_]   
Attn: [\_\_\_\_\_]

¹ NTD: Trustee to provide.

² NTD: Gas Purchaser to provide.



Any notice initially delivered orally as may be permitted under this Contract shall be confirmed in writing, and any notice initially delivered by facsimile transmission, email or other electronic means shall be followed by a hard copy sent by first-class mail or express courier within two days after transmission of the facsimile transmission, email or other electronic means.

**ARTICLE XIX**  
**CHOICE OF LAW**

This Contract shall be interpreted and construed in accordance with the applicable laws of the State of Alabama, excluding conflicts of law principles which would refer to the laws of another jurisdiction; provided, however, that the authority of Gas Purchaser to enter into and perform its obligations under this Contract shall be governed by and interpreted in accordance with the laws of the state or commonwealth, as applicable, of its formation.

**ARTICLE XX**  
**MODIFICATIONS**

No modifications of the terms and provisions of this Contract shall be or become effective except pursuant to and upon the due and mutual execution of a supplemental written amendment by the Parties.

**ARTICLE XXI**  
**COMPUTATIONS**

Except as otherwise provided herein, all computations related to prices and indices performed under this Contract shall be rounded to four decimal places (\$0.0000).

**ARTICLE XXII**  
**REPRESENTATIONS AND WARRANTIES**

22.1. Representations and Warranties of Issuer. Issuer hereby makes the following representations and warranties to Gas Purchaser:

(a) Issuer is a public corporation organized as a gas district under the laws of the State of Alabama, duly organized and validly existing under the laws of the State of Alabama, and has the power and authority to own its properties, to carry on its business as now being conducted, and to enter into and to perform its obligations under this Contract.

(b) The execution, delivery, and performance by Issuer of this Contract have been duly authorized by all necessary corporate action of Issuer and do not and will not require, subsequent to the execution of this Contract by Issuer, any consent or approval of the Board of Directors or any officers of Issuer.

(c) This Contract is the legal, valid, and binding obligation of Issuer, enforceable in accordance with its terms, except as such enforceability may be subject to (i) the exercise of judicial discretion in accordance with general principles of equity and (ii) bankruptcy, insolvency, reorganization, moratorium, and other similar laws affecting creditors' rights heretofore or hereafter enacted, to the extent constitutionally applicable.

(d) As of the date of this Contract, there is no pending or, to Issuer's knowledge, threatened action or proceeding affecting Issuer which purports to affect the legality, validity, or enforceability of this Contract.

(e) Black Belt shall deliver to Gas Purchaser as a condition precedent to Gas Purchaser's execution of this Agreement an opinion letter of counsel to Black Belt, in substantially the form set forth in Exhibit \_\_\_.

22.2. Representations and Warranties of Gas Purchaser. Gas Purchaser hereby makes the following representations and warranties to Issuer:

(a) Gas Purchaser is a Florida public body corporate and politic, and a joint action agency formed under the Florida Interlocal Cooperation Act, and has the power and authority to own its properties, to carry on its business as now being conducted, and to execute, deliver, and perform this Contract.

(b) The execution, delivery, and performance by Gas Purchaser of this Contract have been duly authorized by all necessary corporate actions of Gas Purchaser and do not and will not require, subsequent to the execution of this Contract by Gas Purchaser, any consent or approval of the governing body or any officers of Gas Purchaser.

(c) This Contract is the legal, valid, and binding obligation of Gas Purchaser, enforceable in accordance with its terms, except as such enforceability may be subject to (i) the exercise of judicial discretion in accordance with general principles of equity and (ii) bankruptcy, insolvency, reorganization, moratorium, and other similar laws affecting creditors' rights heretofore or hereafter enacted, to the extent constitutionally applicable.

(d) As of the date of this Contract, there is no pending or, to Gas Purchaser's knowledge, threatened action or proceeding affecting Gas Purchaser which purports to affect the legality, validity, or enforceability of this Contract.

(e) Gas Purchaser shall deliver to Issuer a Federal Tax Certificate in substantially the form set forth in Exhibit E on the Effective Date; provided that, if the Bond Closing Date occurs after December 31, 2019, Gas Purchaser shall deliver an updated Federal Tax Certificate, in substantially the form set forth in Exhibit E<sub>2</sub> on the Bond Closing Date.

(f) Gas Purchaser shall deliver to Issuer an opinion letter of counsel to Gas Purchaser in substantially the form set forth in Exhibit F on the Bond Closing Date.

(g) Gas Purchaser shall deliver to Issuer a Closing Certificate in substantially the form set forth in Exhibit H on the Bond Closing Date.

### **ARTICLE XXIII** **CERTAIN OBLIGATIONS OF GAS PURCHASER**

23.1. Tax-Exempt Status of Bonds. The Bonds will be issued with the intention that the interest thereon will be exempt from federal taxes under Section 103 of the Code. Accordingly, Gas Purchaser agrees that it will (a) provide such information with respect to its gas supply

program as may be requested by Issuer in order to establish the tax-exempt status of the Bonds, and (b) act in accordance with such written instructions as Issuer may provide from time to time in order to maintain the tax-exempt status of the Bonds. Gas Purchaser further agrees that it will not at any time take any action, or fail to take any action, which would adversely affect the tax-exempt status of the Bonds. Subject to Section 23.3, Gas Purchaser agrees it will use all of the Gas purchased under this Agreement in compliance with the Qualifying Use Requirements. Gas Purchaser agrees that it will provide such additional information, records and certificates as Issuer may reasonably request to confirm Gas Purchaser's compliance with this Section 23.1.

23.2. Continuing Disclosure. Gas Purchaser agrees to provide to Issuer: (a) such financial and operating information as may be requested by Issuer including its most recent audited financial statements for use in Issuer's offering documents for the Bonds; and (b) annual updates to such information and statements to enable Issuer to comply with its continuing disclosure undertakings under Rule 15c2-12 of the United States Securities and Exchange Commission (the "Rule"). Failure by Gas Purchaser to comply with its agreement to provide such annual updates shall not be a default under this Contract, but any such failure shall entitle Issuer or an owner of the Bonds to take such actions and to initiate such proceedings as may be necessary and appropriate to cause Gas Purchaser to comply with such agreement, including without limitation the remedies of mandamus and specific performance.

23.3. Remediation. The Parties acknowledge that Gas Purchaser may at times need to remarket, or may at times inadvertently remarket, Gas received hereunder or, with respect to Electricity generated using Gas received hereunder, may sell or utilize the Electricity in a manner that does not comply with the Qualifying Use Requirements due to, *inter alia*, daily and hourly fluctuations in Gas Purchaser's Commodity needs. To the extent Gas Purchaser does so, Gas Purchaser shall, to the extent possible, use the proceeds of such remarketing to purchase Commodities (other than Priority Commodities) that Gas Purchaser uses in compliance with the Qualifying Use Requirements by not later than the end of the calendar quarter (each calendar quarter, a "Quarter") in which such proceeds were received. To track compliance with these requirements, Gas Purchaser will provide a quarterly report to Issuer (delivered not later than the 15th day of each April, July, October and January until the end of the Delivery Period) showing the following (each, a "Quarterly Report"):

(a) The total quantity of Priority Commodities received by Gas Purchaser during such Quarter;

(b) The total quantity of Priority Commodities sold or used not in compliance with the Qualifying Use Requirements (such quantity as units, "Disqualified Sale Units" and such quantity as value received, "Disqualified Sale Proceeds").

(c) If, for any Quarter, Gas Purchaser had any Disqualified Sale Proceeds, then such Quarterly Report must also demonstrate whether such Disqualified Sale Proceeds were remediated through the purchase of Commodities (other than Priority Commodities) used in compliance with the Qualifying Use Requirements. In connection therewith, Gas Purchaser shall report the following for any Quarter in which it had Disqualified Sale Proceeds:

(i) Gas Purchaser's aggregate system demand for the preceding Quarter;

(ii) the total quantity (in units and dollars) of Electricity (other than Priority Commodities) purchased by Gas Purchaser during such Quarter from generation not owned or controlled by Gas Purchaser;

(iii) the total quantity (in units) of Electricity (other than Priority Commodities) generated using capacity owned or controlled by Gas Purchaser during such Quarter;

(iv) the total quantity (in units) of Gas (other than Priority Commodities) used by Gas Purchaser in generating the Electricity described in clause (c); and

(v) the extent of any Disqualified Sale Proceeds received from a “governmental person” as defined in Treasury Regulations Section 1.141-1(b) that agreed in writing to not use any part of such Gas for a “private business use” as defined in Section 141 of the Code.

23.4. Remarketing Reserve Payment. To the extent any Quarterly Report delivered under Section 23.3 does not demonstrate that all Disqualified Sale Proceeds were remediated as described above, then:

(a) Issuer shall cause such unremediated Disqualified Sale Proceeds and the associated Disqualified Sale Units to be added to the appropriate remarketing ledgers maintained by MSES under the Prepaid Agreement, with the ledger entries dated as of the end of the first Month of the relevant Quarter,

(b) Gas Purchaser shall pay to Issuer, for deposit into the Gas Remarketing Reserve Fund (as defined in the Bond Indenture) an amount equal to the applicable Monthly Discount multiplied by unremediated Disqualified Sale Units (the number of MMBtus) for such Quarter. This amount will be due in the Month following delivery of the Quarterly Report on which such Disqualified Sale Units were reported.

## **ARTICLE XXIV** **EXCHANGES**

24.1. General Rule. Gas Purchaser may effectuate an exchange of Delivery Points for Gas purchased under this Contract on a daily or Monthly basis under Section 24.2 or Section 24.3; provided, however, that any failure by a third party to perform its obligations under any such exchange arrangement shall not relieve Gas Purchaser of its obligations under this Contract.

24.2. Description of Exchange Agreement. Gas Purchaser may enter into an exchange agreement with a third party under which Gas Purchaser implements redelivery of the Gas delivered at a Delivery Point (“Point A”) to a delivery point on another pipeline on which Gas Purchaser has firm transportation receipt points (“Point B”). Under such an exchange agreement, Gas Purchaser would deliver Gas at Point A to the exchange counterparty and receive delivery of an equivalent value of Gas at Point B from the exchange counterparty. The equivalent value of Gas at Point B may be taken by Gas Purchaser on the same Gas Day that Gas is delivered at Point A or at any time after such Gas Day within the same or the next succeeding Month. The transaction

described in this Section 24.2 is not in itself a “disqualifying use” under federal tax law in effect on the date of this Contract.

24.3. Exchange Transactions Through a Third Party. In addition to an exchange agreement under Section 24.2, Gas Purchaser may effectuate an exchange of deliveries of Gas at Point A (as described in Section 24.2) for deliveries at Point B (as described in Section 24.2) by entering into an agreement to provide the exchange through a third party. Under such an agreement, Gas Purchaser would arrange for the delivery of Gas to one party (“Party 1”) at Point A, and the receipt of Gas from another party (“Party 2”) at Point B, either directly or through a commodity exchange such as the Intercontinental Exchange, and bring the arrangements with Party 1 and Party 2 to a third party for the third party to enter into. Gas Purchaser would then enter into an exchange agreement with the third party, as described in Section 24.2 above. The transaction described in this Section 24.3 is not in itself a “disqualifying use” under federal tax law in effect on the date of this Contract.

## **ARTICLE XXV** **INTERPRETATION**

25.1. Entirety of Contract. This Contract constitutes the entire agreement between Issuer and Gas Purchaser with respect to the sale, delivery, purchase and receipt of the Daily Contract Quantity under the Prepaid Project, and supersedes any and all prior negotiations, understandings, or agreements by the Parties with respect to the foregoing, whether oral or in writing.

25.2. Headings. The headings used throughout this Contract are inserted for reference purposes only and shall not be construed or considered in interpreting the terms and provisions of any Section or Article or this Contract as a whole.

25.3. Severability. If any Article, Section, term, or provision of this Contract becomes or is declared by a court of competent jurisdiction to be illegal, unenforceable, or void, this Contract shall continue in full force and effect without said Article, Section, term, or provision; provided, however, that if such severance materially changes the economic benefits of this Contract to either Party, the Parties agree to negotiate promptly an equitable adjustment to the provisions of this Contract in good faith so as to place the Parties in as close to the same position as is possible under the circumstances as they were prior to such declaration by the court or other action or event.

25.4. Limited Liability. Issuer and Gas Purchaser acknowledge and agree that Gas Purchaser’s obligations under this Contract are limited as expressly described in this Contract and that Issuer has no recourse to any other source of payment from Gas Purchaser except as set forth in Section 11.4 of this Contract. Issuer and Gas Purchaser acknowledge and agree that Gas Purchaser has no recourse to any source of payment from Issuer under this Contract except the Trust Estate as defined in the Bond Indenture, and only to the extent such funds are available to be applied for such purpose in accordance with the Bond Indenture.

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**ARTICLE XXVI**  
**COUNTERPARTS**

This Contract may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument, and each of which shall be deemed to be an original instrument as against a Party that has signed it.

IN WITNESS WHEREOF, the Parties hereto have executed this Contract as of the date hereinabove first written.

**FLORIDA GAS UTILITY**

By: \_\_\_\_\_

Attested By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

**THE BLACK BELT ENERGY GAS DISTRICT**

By: \_\_\_\_\_

Attested By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBIT A**

**PRIMARY DELIVERY POINTS**

**[To come.]**

**EXHIBIT B**

**DAILY CONTRACT QUANTITIES**

[ ] MMBtu per day



**EXHIBIT C**

**INDEX PRICE**

[To come.]

**EXHIBIT D**

**MONTHLY DISCOUNT**

[ ] per MMBtu per for the period from and including [ ] to and including [ ]

## **EXHIBIT E**

### **FEDERAL TAX CERTIFICATE**

This Federal Tax Certificate is executed in connection with the Gas Supply Contract dated as of \_\_\_\_\_, 2019 (the "Supply Contract"), by and between The Black Belt Energy Gas District (the "District") and Florida Gas Utility ("Gas Purchaser"). Capitalized terms used and not otherwise defined herein shall have the meanings given to them in the Supply Contract, in the Tax Certificate and Agreement entered into by the District, or in the Bond Indenture.

WHEREAS Gas Purchaser acknowledges that the District is issuing the Bonds to fund the prepayment price under the Prepaid Gas Agreement; and

WHEREAS the Bonds are intended to qualify for tax exemption under Section 103 of the Internal Revenue Code of 1986, as amended; and

WHEREAS Gas Purchaser's use of Gas acquired pursuant to the Supply Contract and certain funds and accounts of Gas Purchaser will affect the Bonds' qualification for such tax exemption.

NOW, THEREFORE, GAS PURCHASER HEREBY CERTIFIES AS FOLLOWS:

1. Gas Purchaser is a Florida public body corporate and politic and a joint action agency formed under the Florida Interlocal Cooperation Act and owns and operates a gas supply joint action organization for the sale and delivery of Gas and related services to its wholesale municipal gas distribution system members, to its wholesale municipal electric distribution system members, and to a municipal electric joint action agency (the "Members").
2. Gas Purchaser will use all of the Gas acquired pursuant to the Supply Contract (i) for sale to its wholesale gas distribution Members for sale to their retail Gas customers within their Gas service areas; (ii) for sale to its municipal electric distribution system Members, which will use the Gas to generate electricity which they will sell to their retail electricity customers within their respective electricity distribution service areas; or (iii) for sale to its electric joint action agency Member to generate electricity to sell to its municipal electric distribution system Members, which will resell such electricity to retail electricity customers within their respective electricity distribution service areas; with retail sales in all cases being made pursuant to regularly and generally applicable tariffs or under authorized requirements contracts. For purposes of the foregoing sentence, the term "service area" means (x) the area throughout which Gas Purchaser or the Member, or the Members customers, as the case may be, provided gas or electricity distribution service at all times during the five-year period ending on December 31, 2018, and from then until the date of issuance of the Bonds (the "Closing Date"), and (y) any area recognized as the service area of Gas Purchaser or the Member, or the Member's customers, as the case may be, under state or federal law.
3. As described in paragraphs 1 and 2 above, Gas Purchaser serves Members in three categories: (i) municipal gas distribution systems; (ii) municipal electric systems which use Gas for the generation of electricity for sale to their retail electric system customers; (iii) combination municipal gas and municipal electric system Members who utilize Gas for the purposes described

in clauses (i) and (ii), respectively; and (iv) a municipal electric joint action agency that uses Gas for the generation of electricity that it sells to its municipal electric distribution system members for the sale of electricity to their retail electric customers in their respective service areas.

A. In the case of municipal gas distribution Members, the annual average amount of Gas purchased (other than for resale) by customers of such Members who are located within the service area of such Members is \_\_\_\_\_ MMBtu. Details for such sales by each such Member are set forth in Attachment 1 to this Certificate. The maximum annual amount of Gas in any year being acquired pursuant to the Supply Contract for sale to such Members is \_\_\_\_\_ MMBtu. Details for such purchases with respect to each such Member are set forth in Attachment 1 to this Certificate. The maximum amount of Gas which Gas Purchaser otherwise has a right to acquire for sale to such Members, as of the Closing Date, is \_\_\_\_\_ MMBtu. Details concerning such purchases are set forth in Attachment 1 to this Certificate. The annualized amount of Gas which such Members hold in storage as of the Closing Date is \_\_\_\_\_ MMBtu. Details concerning such amounts with respect to each such Member are set forth in Attachment 1 to this Certificate. The maximum coincident sum of (a) the maximum amount of Gas in any year being acquired pursuant to the Supply Contract, (b) the amount of Gas which Gas Purchaser otherwise has a right to acquire for sale to such Members, and (c) the amount of Gas which Gas Purchaser's Members described above hold in storage as of the Closing Date is \_\_\_\_\_ MMBtu. Details concerning this coincident calculation are shown in Appendix 1 to this Certificate. Accordingly, the amount of Gas to be acquired under the Supply Contract by Gas Purchaser for sale to such Members, supplemented by the amount of Gas otherwise available to Gas Purchaser as of the Closing Date for sale to such Members, during any year does not exceed the sum of (i) \_\_\_% of the annual average amount during the testing period of Gas purchased (other than for resale) by customers of the Members described in this paragraph 3(A) who are located within the service area of such Members and (ii) the amount of Gas to be used to transport the prepaid Gas to such Members during such year. For purposes of this paragraph 3(A), the term "testing period" means the five calendar years ending December 31, 2018, and the term "service area" means (x) the area throughout which such Members provided Gas transmission or distribution service at all times during the testing period, (y) any area within a county contiguous to the area described in (x) in which retail Gas customers of such Member are located if such area is not also served by another utility providing Gas services, and z) any area recognized as the service area of such Member under state or federal law.

B. In the case of municipal electric distribution Members, the annual average amount of Gas purchased (other than for resale) by such Members for the generation of electricity for sale (other than for resale) to customers of such Members within the service area of such Members is \_\_\_\_\_ MMBtu. Details for such sales by each such Member are set forth in Attachment 1 to this Certificate. The maximum annual amount of Gas in any year being acquired pursuant to the Supply Contract for sale to such Members is \_\_\_\_\_ MMBtu. Details for such purchases with respect to each such Member are set forth in Attachment 1 to this Certificate. The maximum amount of Gas which Gas Purchaser otherwise has a right to acquire for sale to such Members, as of the Closing Date, is \_\_\_\_\_ MMBtu. Details concerning such purchases are set forth in Attachment 1 to this Certificate. The annualized amount of Gas which such Members hold in storage as of the Closing Date is \_\_\_\_\_ MMBtu. Details concerning such amounts with respect to each such Member are set forth in Attachment 1 to this Certificate. The maximum coincident sum of (a) the maximum amount of Gas in any year being acquired pursuant to the Supply Contract, (b) the amount of Gas which Gas Purchaser otherwise has a right to acquire for sale to such Members, and (c) the amount of Gas which Gas Purchaser's Members described above hold in storage as of the Closing Date is \_\_\_\_\_ MMBtu.

\_\_\_\_\_ MMBtu. Details concerning this coincident calculation are shown in Appendix 1 to this Certificate. Accordingly, the amount of Gas to be acquired under the Supply Contract by Gas Purchaser for sale to such Members, supplemented by the amount of Gas otherwise available to Gas Purchaser as of the Closing Date for sale to such Members, during any year does not exceed the sum of (i) \_\_\_% of the annual average amount during the testing period of Gas purchased (other than for resale) by customers of the Members described in this paragraph 3(B) who are located within the service area of such Members and (ii) the amount of Gas to be used to transport the prepaid Gas to such Members during such year. For purposes of this paragraph 3(B), the term “testing period” means the five calendar years ending December 31, 2018, and the term “service area” means (x) the area throughout which such Members provided Gas transmission or distribution service at all times during the testing period, (y) any area within a county contiguous to the area described in (x) in which retail Gas customers of such Member are located if such area is not also served by another utility providing Gas services, and z) any area recognized as the service area of such Member under state or federal law.

C. In the case of Gas Purchaser’s electric joint action agency Member, the annual average amount of Gas purchased by such Member for the generation of electricity for sale to member customers of such Member, for the sale by such members (other than for resale) to retail customers within the service areas of such members is \_\_\_\_\_ MMBtu. Details for such sales by such Member are set forth in Attachment 1 to this Certificate. The maximum annual amount of Gas in any year being acquired pursuant to the Supply Contract for sale to such Member is \_\_\_\_\_ MMBtu. Details for such purchases with respect to such Member are set forth in Attachment 1 to this Certificate. The maximum amount of Gas which Gas Purchaser otherwise has a right to acquire for sale to such Member, as of the Closing Date, is \_\_\_\_\_ MMBtu. Details concerning such purchases are set forth in Attachment 1 to this Certificate. The annualized amount of Gas which such Member holds in storage as of the Closing Date is \_\_\_\_\_ MMBtu. Details concerning such amounts with respect to such Member are set forth in Attachment 1 to this Certificate. The maximum coincident sum of (a) the maximum amount of Gas in any year being acquired pursuant to the Supply Contract, (b) the amount of Gas which Gas Purchaser otherwise has a right to acquire for sale to such Member, and (c) the amount of Gas which Gas Purchaser’s Member described above holds in storage as of the Closing Date is \_\_\_\_\_ MMBtu. Details concerning this coincident calculation are shown in Appendix 1 to this Certificate. Accordingly, the amount of Gas to be acquired under the Supply Contract by Gas Purchaser for sale to such Member, supplemented by the amount of Gas otherwise available to Gas Purchaser as of the Closing Date for sale to such Member, during any year does not exceed the sum of (i) \_\_\_% of the annual average amount during the testing period of Gas purchased (other than for resale) by customers of the Members described in this paragraph 3(B) who are located within the service area of such customers and (ii) the amount of Gas to be used to transport the prepaid Gas to such Member during such year. For purposes of this paragraph 3(B), the term “testing period” means the five calendar years ending December 31, 2018, and the term “service area” means (x) the area throughout which such Member’s municipal electric distribution system customers provided distribution service at all times during the testing period, (y) any area within a county contiguous to the area described in (x) in which retail electric customers of such member customers are located if such area is not also served by another utility providing electric services, and z) any area recognized as the service area of such Member under state or federal law.

4. Gas Purchaser expects to pay for Gas acquired pursuant to the Supply Contract solely from funds derived from sales of Gas to Members and ultimately from sales of Gas or electricity to downstream retail customers. Gas Purchaser expects to use current net revenues of its operations to pay for current Gas acquisitions.; There are no funds or accounts of Gas Purchaser

or any person who is a Related Person to Gas Purchaser in which monies are invested and which are reasonably expected to be used to pay for Gas acquired more than one year after it is acquired. No portion of the proceeds of the Bonds will be used directly or indirectly to replace funds of Gas Purchaser or any persons who are Related Persons to Gas Purchaser that are or were intended to be used for the purpose for which the Bonds were issued.

\_\_\_\_\_, 2019

By: \_\_\_\_\_  
[Name]

**EXHIBIT F**

**FORM OF OPINION OF COUNSEL TO GAS PURCHASER**

[\_\_\_\_], 2019

The Black Belt Energy Gas District  
Jackson, AL

Morgan Stanley Capital Group Inc.  
New York, NY

Morgan Stanley  
New York, NY

Bank of New York Mellon Trust Company, N.A.  
Birmingham, AL

BP Energy Company  
Houston, TX

Re: Gas Supply Contract Between \_\_\_\_\_ and The  
Black Belt Energy Gas District dated [\_\_\_\_], 2019

Ladies and Gentlemen:

We are Counsel to \_\_\_\_\_ (“Gas Purchaser”). Gas Purchaser is a Project Participant in the Prepaid Project undertaken by The Black Belt Energy Gas District (“Issuer”). We are furnishing this opinion to you in connection with the Gas Supply Contract between Issuer and Gas Purchaser dated as of [\_\_\_\_], 2019 (the “Supply Contract”).

Unless otherwise specified herein, all terms used but not defined in this opinion shall have the same meaning as is ascribed to them in the Supply Contract.

In connection with this opinion, we have examined originals or copies, certified or otherwise identified to our satisfaction, of the following:

(a) The Constitution and laws of the State of \_\_\_\_\_ (the “State”) including, as applicable, acts, ordinances, certificates, articles, charters, bylaws, and agreements pursuant to which Gas Purchaser was created and by which it is governed;

(b) Resolution No. [\_\_\_], duly adopted by Gas Purchaser on [\_\_\_\_\_] (the “Resolution”) and certified as true and correct by certificate and seal, authorizing Gas Purchaser to execute and deliver the Supply Contract;

(c) A copy of the Supply Contract executed by Gas Purchaser; and

(d) All outstanding instruments relating to bonds, notes, or other indebtedness of or relating to Gas Purchaser and Gas Purchaser's municipal utility system.

We have also examined and relied upon originals or copies, certified or otherwise authenticated to our satisfaction, of such records, documents, certificates, and other instruments, and made such investigations of law, as in our judgment we have deemed necessary or appropriate to enable us to render the opinions expressed below.

Based upon the foregoing, we are of the opinion that:

1. Gas Purchaser is a [public corporation/municipal corporation/etc.] of the State, duly organized and validly existing under the laws of the State, and has the power and authority to own its properties, to carry on its business as now being conducted, and to enter into and to perform its obligations under the Supply Contract.

2. The execution, delivery, and performance by Gas Purchaser of the Supply Contract have been duly authorized by the governing body of Gas Purchaser and do not and will not require, subsequent to the execution of the Supply Contract by Gas Purchaser, any consent or approval of the governing body or any officers of Gas Purchaser.

3. The Supply Contract is the legal, valid, and binding obligation of Gas Purchaser, enforceable in accordance with its terms, except as such enforceability may be subject to (i) the exercise of judicial discretion in accordance with general principles of equity and (ii) bankruptcy, insolvency, reorganization, moratorium, and other similar laws affecting creditors' rights heretofore or hereafter enacted, to the extent constitutionally applicable.

4. No approval, consent or authorization of any governmental or public agency, authority, commission or person, or, to our knowledge, of any holder of any outstanding bonds or other indebtedness of Gas Purchaser, is required with respect to the execution, delivery and performance by Gas Purchaser of the Supply Contract or Gas Purchaser's participation in the transactions contemplated thereby other than those approvals, consents and/or authorizations that have already been obtained.

5. The authorization, execution and delivery of the Supply Contract and compliance with the provisions thereof (a) will not conflict with or constitute a breach of, or default under, (i) any instrument relating to the organization, existence or operation of Gas Purchaser, (ii) any ruling, regulation, ordinance, judgment, order or decree to which Gas Purchaser (or any of its officers in their respective capacities as such) is subject or (iii) any provision of the laws of the State relating to Gas Purchaser and its affairs, and (b) to our knowledge will not result in, or require the creation or imposition of, any lien on any of the properties or revenues of Gas Purchaser pursuant to any of the foregoing.



6. Gas Purchaser is not in breach of or default under any applicable constitutional provision or any law or administrative regulation of the State or the United States or any applicable judgment or decree or, to our knowledge, any loan or other agreement, resolution, indenture, bond, note, resolution, agreement or other instrument to which Gas Purchaser is a party or to which Gas Purchaser or any of its property or assets is otherwise subject, and to our knowledge no event has occurred and is continuing which with the passage of time or the giving of notice, or both, would constitute a default or event of default under any such instrument.

7. Payments to be made by Gas Purchaser under the Supply Contract shall constitute operating expenses of Gas Purchaser's utility system payable solely from the revenues and other available funds of Gas Purchaser's utility system as a cost of purchased gas. The application of the revenues and other available funds of Gas Purchaser's utility system to make such payments is not subject to any prior lien, encumbrance or other restriction.

8. As of the date of this opinion, to the best of our knowledge after due inquiry, there is no pending or threatened action or proceeding at law or in equity or by any court, government agency, public board or body affecting or questioning the existence of Gas Purchaser or the titles of its officers to their respective offices or affecting or questioning the legality, validity, or enforceability of this Supply Contract nor to our knowledge is there any basis therefor.

This opinion is rendered solely for the use and benefit of the addressees listed above in connection with the Supply Contract and may not be relied upon other than in connection with the transactions contemplated by the Supply Contract, or by any other person or entity for any purpose whatsoever, nor may this opinion be quoted in whole or in part or otherwise referred to in any document or delivered to any other person or entity, without the prior written consent of the undersigned.

Very truly yours,

**EXHIBIT G**

**FORM OF REMARKETING ELECTION NOTICE**

[Issuer]  
[Address]

[MSES]  
[Address]

[Trustee]  
[Address]

To the Addressees:

The undersigned, duly authorized representative of \_\_\_\_\_ (the “Gas Purchaser”), is providing this Gas Remarketing Election Notice pursuant to the Gas Supply Contract, dated as of \_\_\_\_\_, 2019 (the “Supply Contract”), between The Black Belt Energy Gas District and the Gas Purchaser. Capitalized terms used herein shall have the meanings set forth in the Supply Contract.

Pursuant to Section 5.3(b) of the Supply Contract, the Gas Purchaser has elected to have its DCQ for each Gas Day of each Month of the applicable Reset Period remarketed beginning with the month of [\_\_\_\_\_] 20[\_\_\_], and that the resumption of deliveries in any future Reset Period shall be in accordance with Section 5.3(e) thereof.

Given this [\_\_\_] day of [\_\_\_\_\_], 20[\_\_\_].

[Name]

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

**EXHIBIT H**

**FORM OF CLOSING CERTIFICATE**

**CLOSING CERTIFICATE OF GAS PURCHASER**

[\_\_\_\_], 2019

Re: The Black Belt Energy Gas District  
Gas Project Revenue Bonds,  
Series \_\_\_\_\_

The undersigned [President/Chairman/Chief Executive Officer] of \_\_\_\_\_ (the "Gas Purchaser"), hereby certifies as follows in connection with the Gas Supply Contract dated as of \_\_\_\_\_, 2019 (the "Contract") between the Gas Purchaser and The Black Belt Energy Gas District ("Issuer") and the issuance and sale by Issuer of the above-referenced bonds (the "Bonds") (capitalized terms used and not defined herein shall have the meanings given to them in the Contract):

1. Gas Purchaser is a [public corporation/municipal corporation/etc.] duly created and validly existing and in good standing under the laws of the State of \_\_\_\_\_ (the "State"), and has the corporate power and authority to enter into and perform its obligations under the Contract.

2. By all necessary official action on its part, the Gas Purchaser has duly authorized and approved the execution and delivery of, and the performance by the Gas Purchaser of the obligations on its part contained in the Contract, and such authorization and approval has not been amended, supplemented, rescinded or modified in any respect since the date thereof.

3. The Contract constitutes the legal, valid and binding obligation of the Gas Purchaser.

4. The authorization, execution and delivery of the Contract and compliance with the provisions on the Gas Purchaser's part contained therein (a) will not conflict with or constitute a breach of or default in any material respect under (i) any instrument relating to the organization, existence or operation of Gas Purchaser, (ii) any ruling, regulation, ordinance, judgment, order or decree to which Gas Purchaser (or any of its officers in their respective capacities as such) is subject or (iii) any provision of the laws of the State relating to Gas Purchaser and its affairs, and (b) will not result in, or require the creation or imposition of, any lien on any of the properties or revenues of Gas Purchaser pursuant to any of the foregoing.

5 The Gas Purchaser is not in breach of or default in any material respect under any applicable constitutional provision, law or administrative regulation of the State or the United States or any applicable judgment or decree or any loan agreement, indenture, bond, note, resolution, agreement or other instrument to which the Gas Purchaser is a party or to which the Gas Purchaser or any of its property or assets are subject, and no event has occurred and is continuing which constitutes or with the passage of time or the giving of notice, or both, would constitute a default or event of default in any material respect by the Gas Purchaser under any of the foregoing.

6. Payments to be made by the Gas Purchaser under the Contract shall constitute operating expenses of the Gas Purchaser's utility system payable solely from the revenues and other available funds of Gas Purchaser's utility system as a cost of purchased gas. The application of the revenues and other available funds of the Gas Purchaser's utility system to make such payments is not subject to any prior lien, encumbrance or other restriction.

7. No litigation, proceeding or tax challenge is pending or, to its knowledge, threatened, against the Gas Purchaser in any court or administrative body which would (a) contest the right of the officials of the Gas Purchaser to hold and exercise their respective positions, (b) contest the due organization and valid existence of the Gas Purchaser, (c) contest the validity, due authorization and execution of the Contract or (d) attempt to limit, enjoin or otherwise restrict or prevent the Gas Purchaser from executing, delivering and performing the Contract, nor to the knowledge of the Gas Purchaser is there any basis therefor.

8. All authorizations, approvals, licenses, permits, consents and orders of any governmental authority, legislative body, board, agency or commission having jurisdiction of the matter which are required for the due authorization of, which would constitute a condition precedent to, or the absence of which would materially adversely affect the due performance by the Gas Purchaser of its obligations under the Contract have been duly obtained.

9. The representations and warranties of the Gas Purchaser contained in the Contract were true, complete and correct on and as of the date thereof and are true, complete and correct on and as of the date hereof.

10. The statements and information with respect to the Gas Purchaser, if any, contained in the Preliminary Official Statement dated \_\_\_\_\_, 2019 and the Official Statement dated \_\_\_\_\_, 2019 with respect to the Bonds, including Appendix B thereto (the "Official Statement"), fairly and accurately describe and summarize the financial and operating position of the Gas Purchaser for the periods shown therein, and such statements and information did not as of the date of the Preliminary Official Statement and the date of the Official Statement, respectively, and the Official Statement does not as of the date hereof contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make such statements and information, in the light of the circumstances under which they were made, not misleading.

11. No event affecting the Gas Purchaser has occurred since the date of the Official Statement which should be disclosed therein in order to make the statements and information with

respect to the Gas Purchaser contained therein, in light of the circumstances under which they were made, not misleading in any material respect.

IN WITNESS WHEREOF the undersigned has executed this Certificate on and as of the date first written above.

[Name of Entity]

By \_\_\_\_\_

Name:

Title:

**AGENDA ITEM 9 – INFORMATION ITEMS**

**a) ARP Net Metering Enrollment Limit Update**

**Executive Committee  
April 18, 2019**



# **EC 9a - ARP Net Metering Policy Enrollment Limit Update**

FMIPA Executive Committee

April 18, 2019

# The Story In Brief

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- The current ARP net metering policy caps an individual Participant's uptake to 2.5% of their peak demand, with discretionary additions possible thereafter
  - Does not specify DC, AC, or AC @ time of peak (no coincident peak requirements)
  - Understood to imply nominal DC
- As of the latest available data, the ARP has ~7.4 MW-DC (6.3 MW-AC) installed, which represents 0.2% of most recent FY peak based on AC capacity estimated at time of peak (0.6% based on nominal DC capacity)
- KUA has a 992\* home development proposed with an average of 7 kW of rooftop per unit, which would bring their total to 10.5 MW-DC and would put KUA close to exceeding their cap (using nominal DC ratings as implied in policy)
- Staff agreed to revisit the policy on a recurring basis as caps were approached and needs feedback on (i) specificity of the policy, and (ii) whether to alter or eliminate the net metering cap
- PSC policy for IOUs currently includes no net metering cap

\*The ARP currently has <800 residential installations in total. KUA has 451 (59%) of those installations.



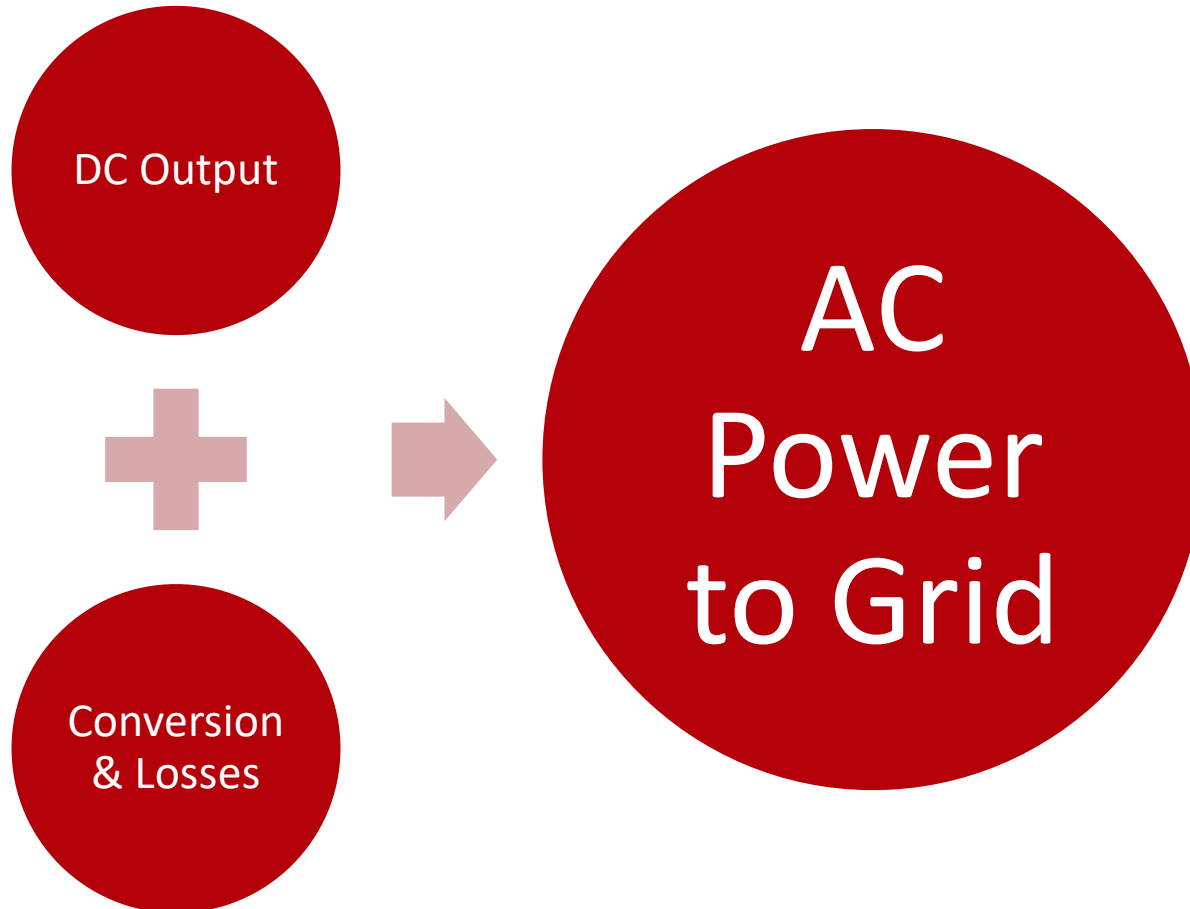
# Why Was a Limit Instituted?

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- If large number of customers subscribe in short period of time, sharp drop in load and stranded costs (**absent appropriate rate adjustments/economic signals**)
- Limit established prior to Great Recession, with dramatic price drop in PV systems and widespread expansion very quickly a potential risk at the time
- Some Participants had concerns around net metering subsidy (paying more than kWh are worth to grid), which was resolved with avoided energy ARP buy-back
- Accommodating non-dispatchable energy on the grid could have limits if uptake dramatically increased in short timeframe (e.g. duck curve)
- ARP would revisit enrollment limit and consider increasing it (case-by-case discretion already in policy)

# Policy Based on DC Ratings of Installs

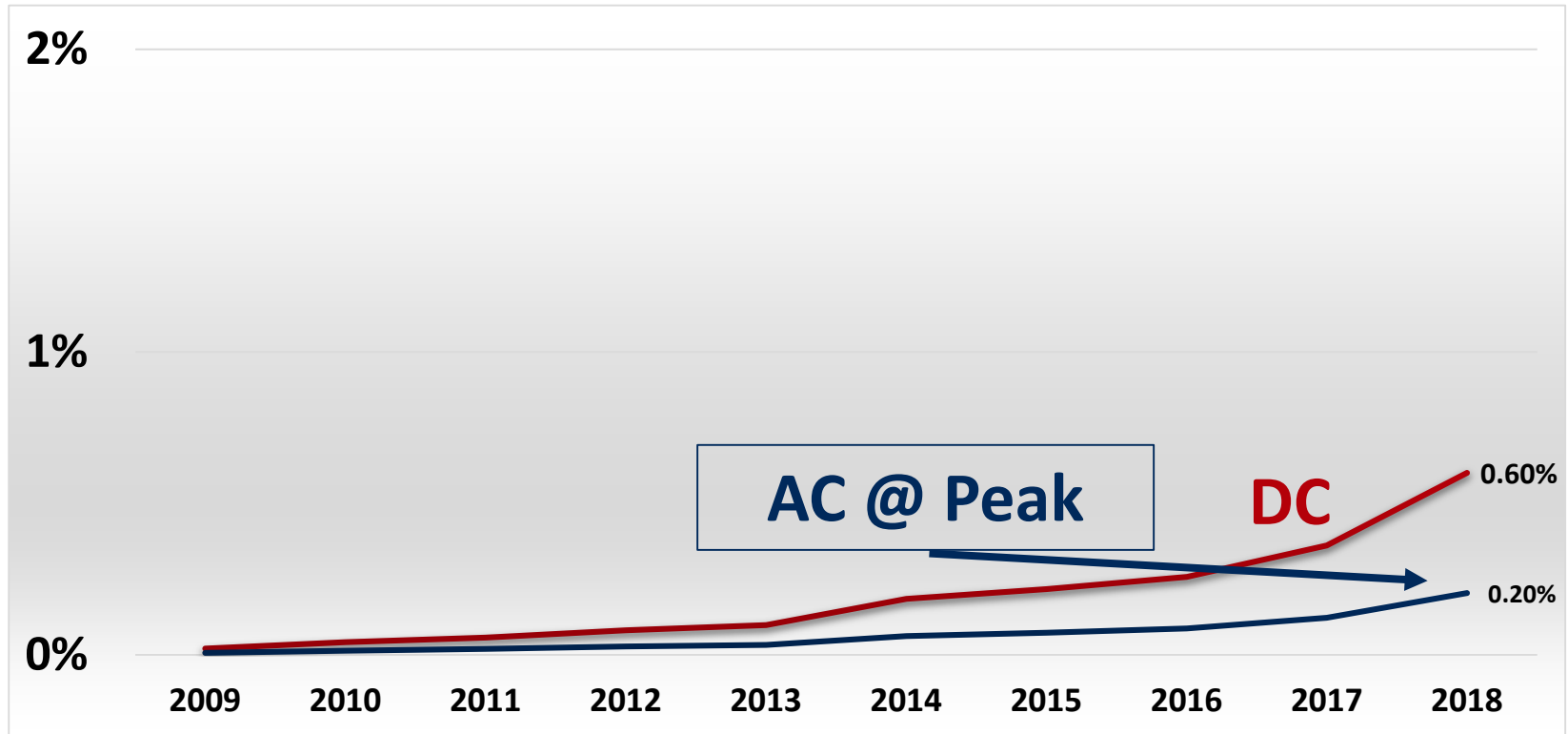
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# ARP at 0.2% of AC at Peak Thru 2018

## ARP % of Net Metering vs. Peak - DC and AC @ Peak

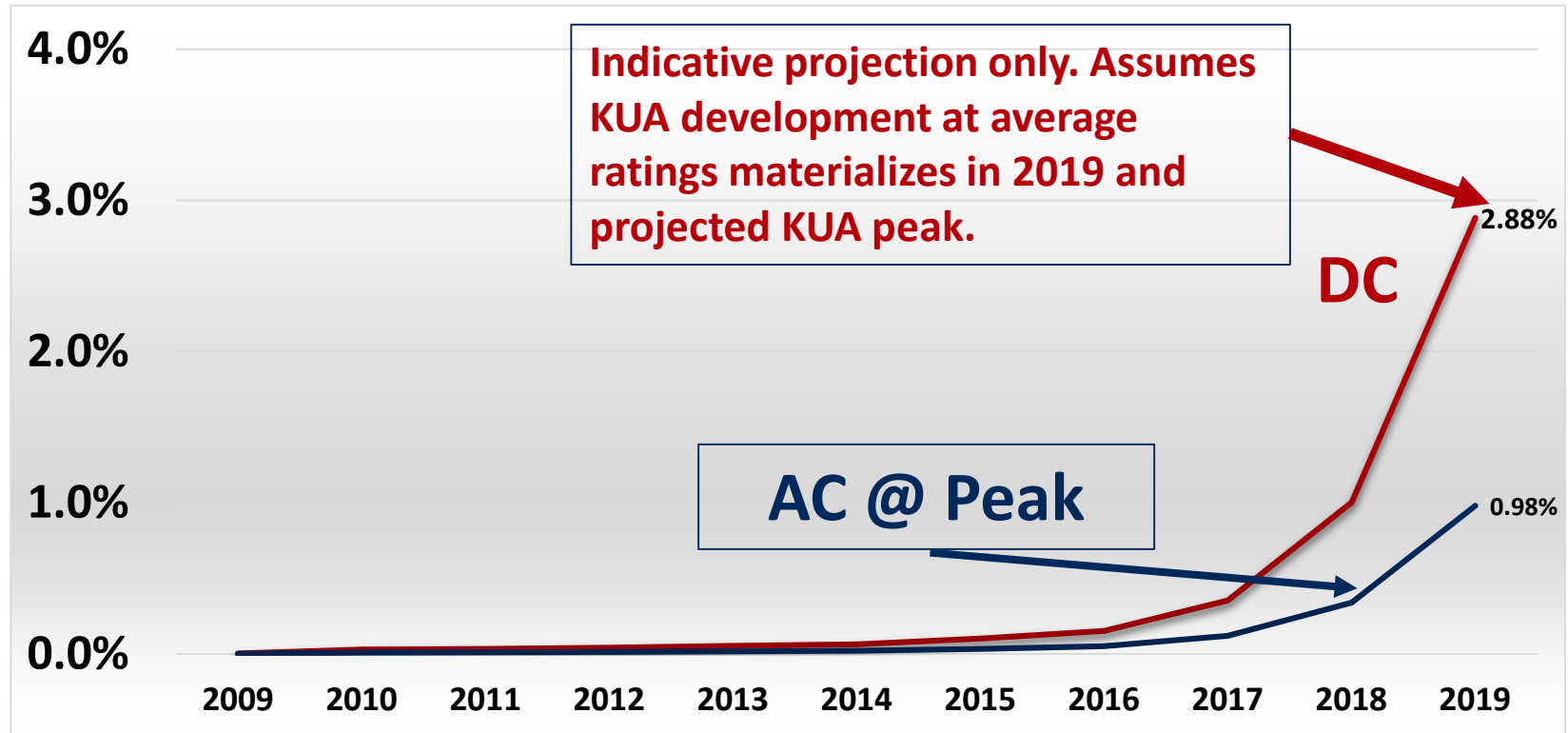
AC @ Peak Assumes 40% of AC Rating on During Summer Peak



# KUA at 0.3% of AC at Peak Thru 2018

## KUA % of Net Metering vs. Peak - DC and AC @ Peak

AC @ Peak Assumes 40% of AC Rating on During Summer Peak



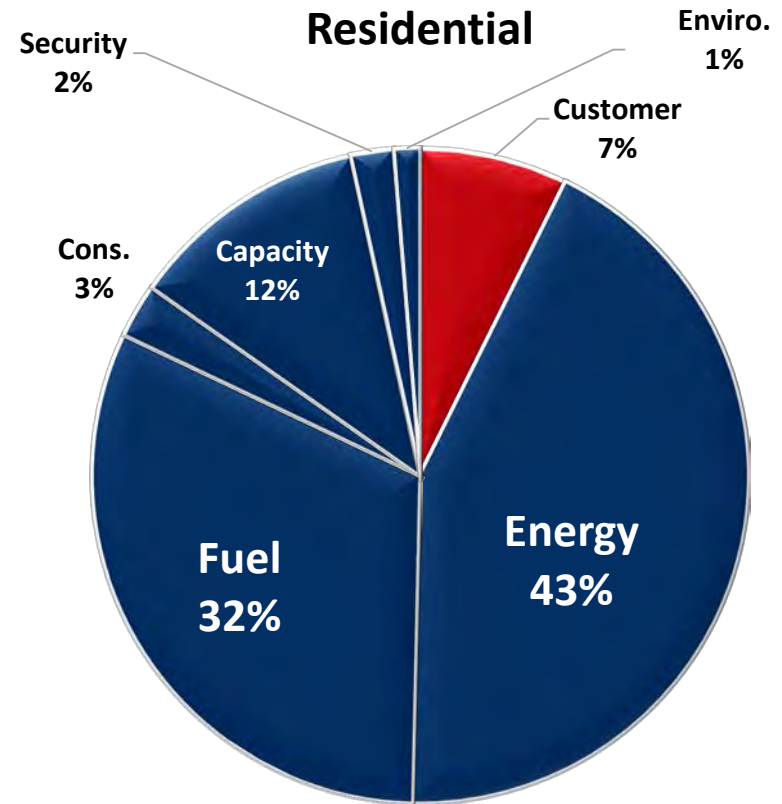
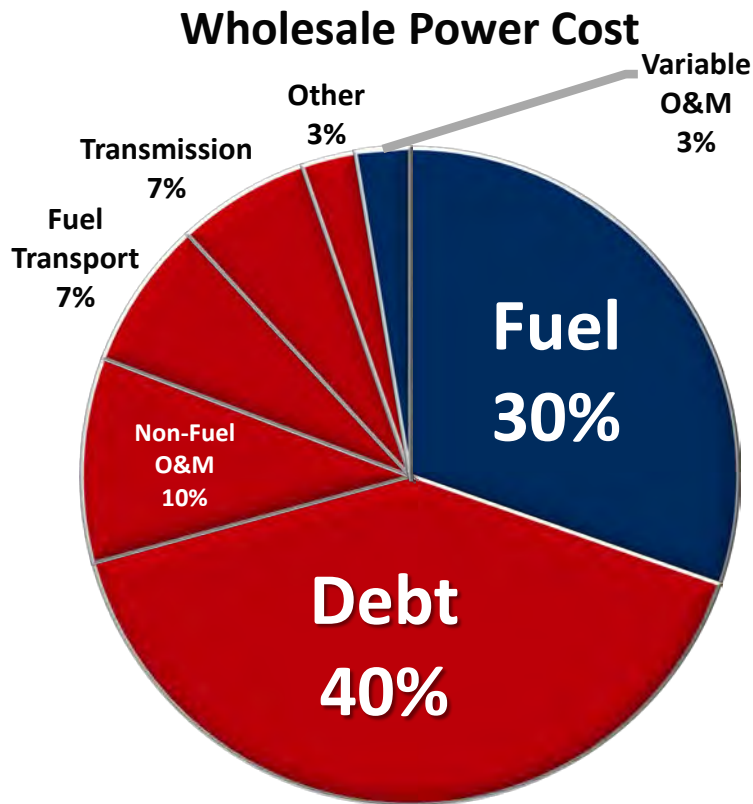
# ARP Rate Impact Limited

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- ARP Rate Impacts from net metering limited, as credit to Participants limited to avoided energy
- ARP Participants decide on their own full retail rate credits and net metering policy (choice and expense impact for Participant)
- Demand-based cost shift technically exists if rooftop is on during system peak (summer only), but given intermittent nature of solar, impact is currently negligible

# Most Retail Rate Structures Not Aligned

## *Net Metering Customers May Avoid Fixed Cost*

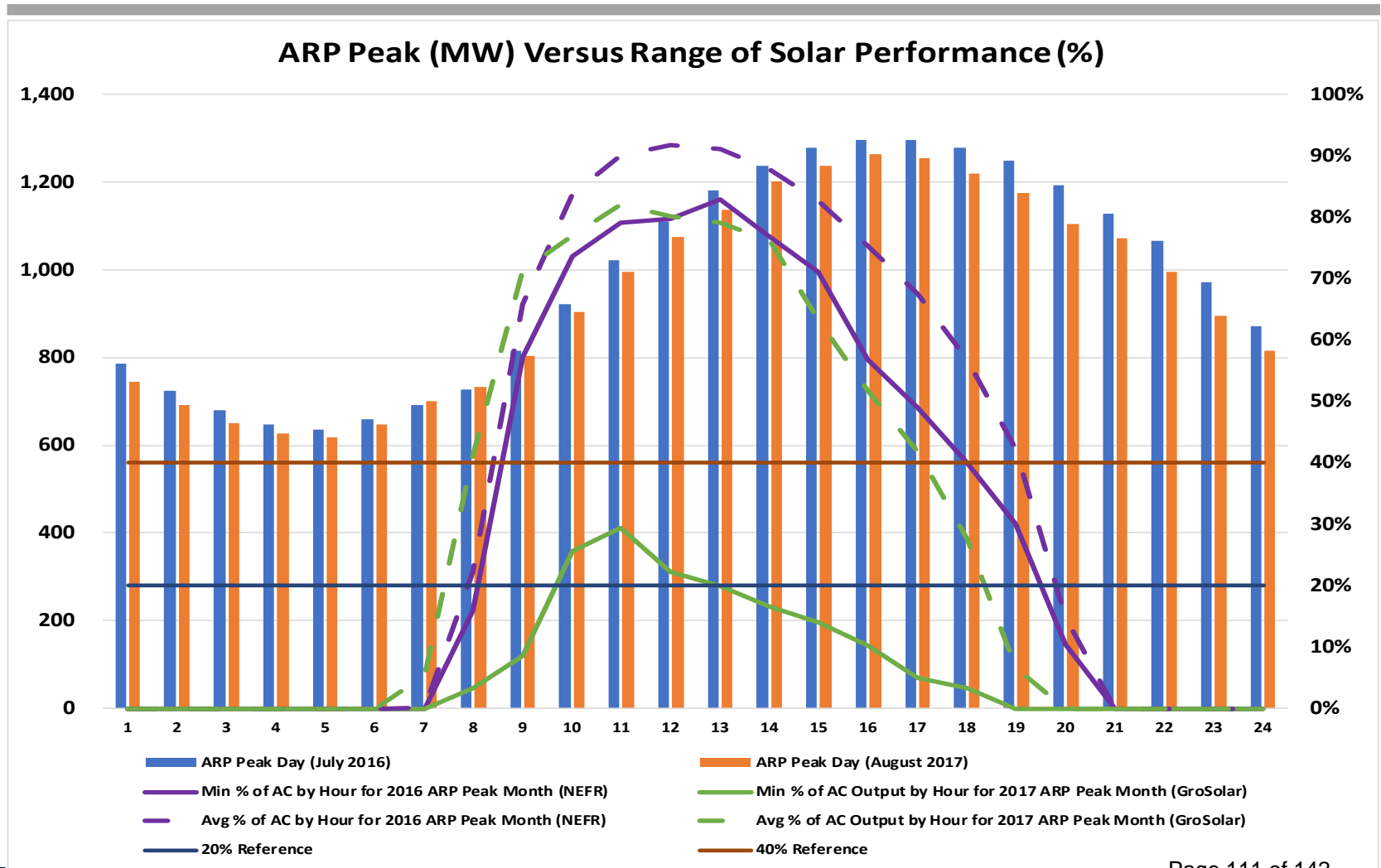


60% or more of costs are fixed, and distribution is almost entirely fixed

Source: Duke March 2018 rates for 1,000 kWh

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# Solar May Get As Much as 40% on Peak



# Cap May Impact Attraction & Retention

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- IOUs must operate without a cap and could attract loads (e.g. large developments) that Participants cannot net meter due to a cap
- More load means more energy during winter peak hours (solar has no value), which could improve winter load factors (7 kW @25% capacity factor means ~1,280 kWh/month, but not spread evenly into each month)
- Managing customer perceptions is a consideration
- If rate structures and economic signals are appropriate, net metering economics more accurate



# Discussion Items: Moving Forward

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- How much is the “right” amount for a cap? Should there be a cap at all?
- Does a hard cap present potentially negative externalities (customer perception, load attraction, benchmarking to IOUs)?
- Should there be a tie-in to correct market price signals to customers if case-by-case exceptions made?

# Members Generally Well Below Cap

Participant	Total Installed (kW-DC)	FY '18 NCP (MW)	% of Peak
Beaches	1,018	214	0.5%
Bushnell	80	7	1.2%
Clewiston	0	25	0.0%
Ft Meade	0	12	0.0%
FPUA	82	112	0.1%
GCS	144	31	0.5%
Havana	41	7	0.6%
Key West	509	145	0.4%
KUA	3,510	356	1.0%
Leesburg	347	115	0.3%
Newberry	68	10	0.7%
Ocala	1,589	297	0.5%
Starke	60	17	0.4%
Total	7,447	1,346	0.6%

# Summary of Options

Option	Potential Impacts	Notes
Improve specificity of actual policy language	Clarifies limit to be based on AC output during annual peak (CP with ARP most likely)	Aligns targeted cap with actual demand impacts on the system and clarifies boundaries for future uptake
Keep 2.5% limit as is (no changes)	Limited to no impact in near to medium term for most members; KUA impact likely	PSC IOU policy has no cap; could impact load attraction long term; rate alignment still needed and policy needs clarity
Increase Limit Across ARP	Middle ground	Allows more time to monitor trends
Case-by-Case Exceptions**	Allowed in current policy	Empowers case by case choices based on load growth potential
Eliminate ARP Level Limit	Most Members still under original cap; ARP could allow Participants to set their own cap; supports new meter growth	Should be paired with parallel review of rate structures to align economic signals with fixed costs for net metering

\*\*Requires direction from EC on whether General Manager can approve new installs or alternative approach to administering Section 6.02 of existing policy.

**AGENDA ITEM 9 – INFORMATION ITEMS**

- b) Green Cove Springs Supplemental Power and Ancillary Services Agreement**

**Executive Committee  
April 18, 2019**



# **EC 9b – Green Cove Springs Supplemental Power and Ancillary Services Agreement**

April 18, 2018

# Green Cove Springs CROD Effective Next Year

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- Green Cove Springs provided 5-year notice of election of CROD on December 10, 2014
- Executive Committee will establish CROD amount in December 2019
  - Based on highest coincident peak demand with the ARP over the 12-month period December 1, 2018 through November 30, 2019
  - CROD calculation tracked in rate workshop package
- CROD will be effective January 1, 2020

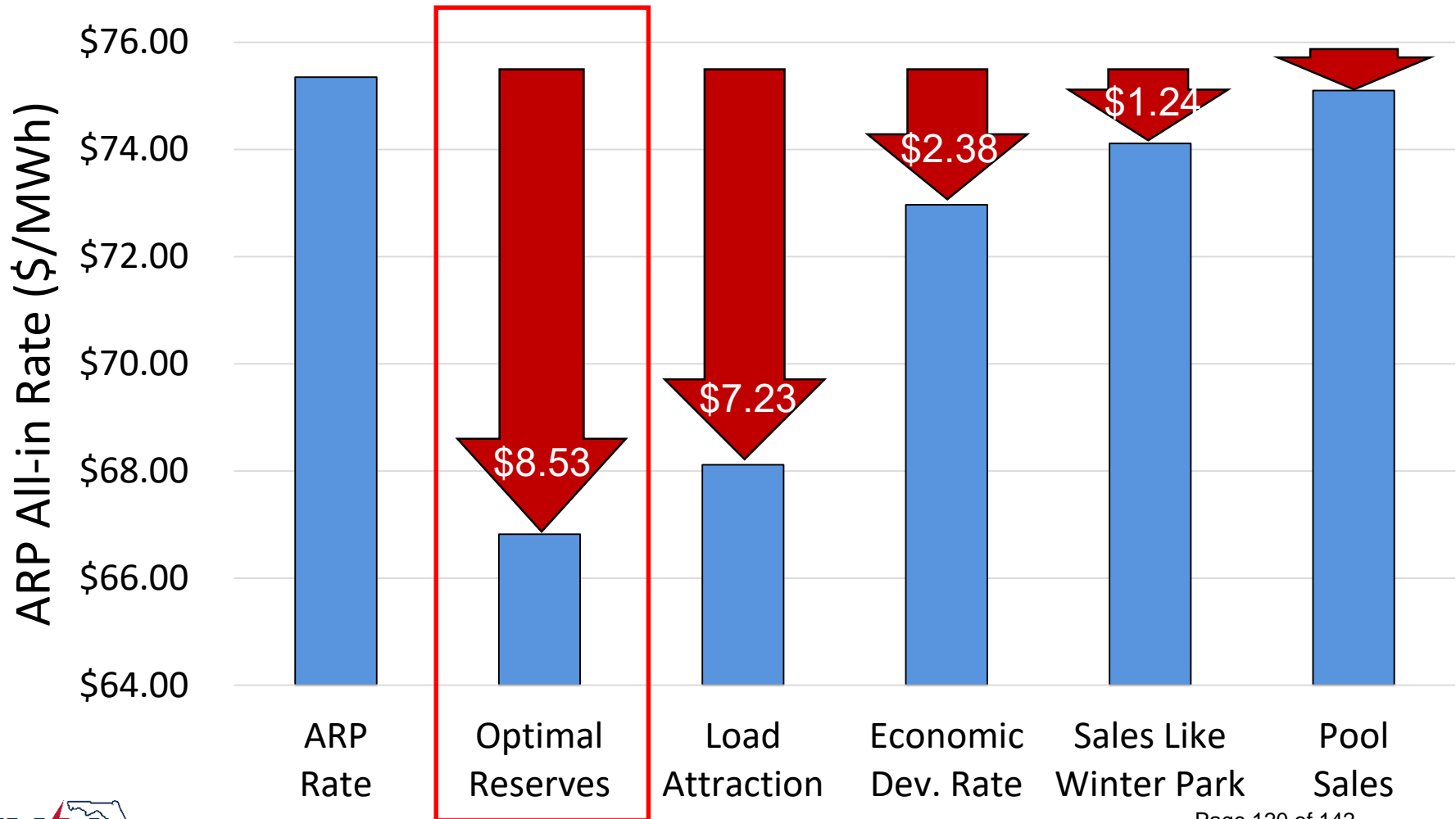
# Supplying All Capacity and Energy Needs to Green Cove Springs

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- Supplemental agreement for ARP to provide everything above CROD and St. Lucie Project entitlements to Green Cove Springs
- Green Cove Springs can reduce potential risk and cost exposure
- The ARP sells some of its excess capacity if Green Cove Springs grows – some additional ARP revenue for at least 10 years
  - Every MW of growth reduces the ARP rate by approximately 4 cents per MWh

# Load Growth Provides Highest Benefit

*Greater Return than Other Opportunities*





# Supplemental Power and Ancillary Services Agreement

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- Supplemental agreement “wraps” around CROD amount to provide for all of Green Cove Springs’s requirements
- CROD remains in effect
- No CROD Responsibility Agreement needed
- No changes to transmission agreements needed
- Initial term to September 30, 2029
  - 4-year automatic renewals until termination of Green Cove Springs’s ARP Contract

# Supplemental Power and Ancillary Services Agreement

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- ARP will serve Green Cove Springs's entire actual load
  - Including any load in excess of the CROD and St. Lucie Project entitlements
- Green Cove Springs billed at the prevailing ARP demand, energy, and transmission rates
  - Green Cove Springs will continue to be able to utilize the Load Attraction Incentive Rate and/or Economic Development Rate to attract new large loads in the same way as any other ARP member

# Result

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- A total wholesale power cost to Green Cove Springs that is effectively the same as if CROD were revoked and they were a full ARP Participant again.

# Information Only

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- Draft agreement attached
- Discussion/Questions?

**DRAFT**

**SUPPLEMENTAL POWER AND ANCILLARY SERVICES AGREEMENT**

This supplemental power and ancillary services agreement (hereafter "**Agreement**") is entered into this \_\_\_ day of \_\_\_\_\_, 2019, by and between FLORIDA MUNICIPAL POWER AGENCY (ALL-REQUIREMENTS POWER SUPPLY PROJECT), a governmental legal entity created and existing pursuant to Florida law ("**FMPA**") and the CITY OF GREEN COVE SPRINGS, FLORIDA, a Florida municipality operating a retail electric utility in Clay County, Florida (the "**City**" or "**GCS**").

**RECITALS**

1. The City is a member of FMPA and a participant in the St. Lucie Project, the first power supply project developed by FMPA, consisting of an 8.8% undivided ownership interest in the St. Lucie Unit No. 2 nuclear power plant, otherwise owned and operated by Florida Power & Light Company ("**FPL**"). FMPA and the City entered into the St. Lucie Project Power Sales Contract and Project Support Contract, dated as of June 1, 1982, as amended (collectively, the "**St. Lucie Project Contracts**"), pursuant to which FMPA agreed to sell and deliver to the City and the City agreed to purchase and receive a 1.757% share of electric capacity and energy from the St. Lucie Generation, as defined in the St. Lucie Project Contracts (the City's, "**St. Lucie Power Entitlement Share**").

2. The City is also a participant in the All-Requirements Power Supply Project (the "**ARP**") pursuant to the All-Requirements Power Supply Project Contract, between the City and FMPA, entered into as of March 22, 1985, as amended (collectively, the "**ARP Contract**"). Pursuant to section 3(a) of the ARP Contract, the City gave notice to irrevocably limit the maximum amount of electric capacity and energy required to be sold and delivered by FMPA and purchased and received by the City as All-Requirements Services (as defined in the ARP Contract) to a Contract Rate of Delivery ("**CROD**"). The City's CROD will be established by the FMPA Executive Committee in December 2019 and become effective on January 1, 2020. Pursuant to past practices, FMPA and the City would need to enter into an agreement to provide for the scheduling of capacity and energy ahead of the January 1, 2020, effective date to implement CROD (a "CROD Responsibility Agreement").

3. The City elected the CROD option based on expectations of significant growth in the City's load and a desire to take advantage of the low-cost power supply available in the market relative to the high ARP rates at the time the City gave notice. The City has not yet experienced the expected load growth, however, continues to believe some degree of growth is inevitable. The City also recognizes the cost improvements that FMPA has made and the corresponding decreases to the ARP rates in effect now.

4. The City desires to limit the impacts of CROD to the City's operations and costs, while continuing to have the ability to make use of available ARP rate discount riders should significant load(s) materialize, consistent with the terms of this Agreement. The City and FMPA discussed the possibility of Executive Committee action to extend the availability of the Load

Attraction Incentive Rate so it is available to be utilized the City for the entire term of this Agreement.

5. Given these circumstances, and in consideration of the mutual benefits provided by this Agreement, FMPA and the City desire to enter into this agreement for FMPA to provide supplemental power and ancillary services to the City, in accord with the terms of this Agreement, in place of a CROD Responsibility Agreement which would otherwise be required.

**ACCORDINGLY**, in consideration of the above stated Recitals and other good and valuable consideration the receipt and adequacy of which is hereby acknowledged by the parties, the parties agree as follows:

**Section 1. Recitals.** The above Recitals are true and correct and form a material part of this Agreement.

**Section 2. Supplemental Capacity and Energy.** FMPA hereby agrees to sell and deliver to the City, and the City hereby agrees to purchase and receive from FMPA, commencing on the Service Effective Date and extending through the Term (as defined below) of this Agreement, all capacity and energy (including all associated transmission and dispatching services) which the City requires for the operation of its municipal electric system over and above its CROD, over and above its Excluded Power Supply Resources (as defined in the ARP Contract), and over and above Back-up and Support Services (as defined in the ARP Contract) ("**Supplemental C&E**").

**Section 3. Term.** (a) This Agreement is effective as of the date stated in the introductory paragraph. This Agreement will remain in effect until September 30, 2029, and thereafter is subject to the following automatic extensions: on September 30, 2029, and each fourth anniversary thereafter (i.e., 2033, etc.), until the termination of the City's ARP Contract, this Agreement will automatically extend for an additional four year period, unless either party notifies the other in writing at least one year prior to such an automatic extension date of its decision to not extend this Agreement (collectively, the "**Term**"). For the avoidance of doubt, this Agreement is co-terminus with the City's ARP Contract.

(b) The provision of Supplemental C&E shall commence on January 1, 2020 (the "**Service Effective Date**").

**Section 4. No Amendment to the ARP Contract.** This Agreement does not amend the ARP Contract and all terms and conditions of the ARP Contract continue to be in full force and effect, applicable to both the City and FMPA. As such, the City, as a participant in the ARP, will continue to be subject to all terms, conditions, covenants, obligations, rights, and limitations, as to this contract and the provision of Supplemental C&E, including being bound by all policies and procedures adopted by FMPA, in accord with the ARP Contract, for the All-Requirements Power Supply Project. Nothing in this Agreement shall limit the FMPA Executive Committee in establishing or amending the ARP rates, including amending, rescinding, or developing new rate riders. Any action by the FMPA Executive Committee relative to rate riders is separate from this Agreement.

**Section 5. Delivery and Billing.** (a) Delivery and receipt of Supplemental C&E pursuant to this Agreement shall be provided for by the parties as though it was a part of the All-Requirements Services provided for in accord with the terms of the ARP Contract. However, the parties hereby acknowledge and agree that the Supplemental C&E is a separate contractual obligation of the parties, pursuant to this contract. During the Term of this Agreement, the point of delivery for Supplemental C&E ("**Supplemental C&E POD**"), and CROD C&E ("**CROD POD**") shall be the interconnection point between the FPL, transmission system and the City's transmission system. FMPA will revise Schedule A of the City's ARP Contract, in accord with section 19(c) of the ARP Contract, to reflect changes that are necessary or appropriate to give effect to this Agreement.

(b) FMPA's contractual obligations under the ARP Contract to provide transmission and related services, including, without limitation, dispatching and scheduling, to GCS for delivery of CROD C&E shall be fulfilled by FMPA delivering or causing to be delivered CROD C&E to the CROD POD, and FMPA will have no obligation or responsibility beyond such CROD POD. FMPA's obligation under 3(a) of the ARP Contract to use its best efforts to arrange for and provide to GCS the transmission services required by GCS for its capacity and energy requirements in excess of its CROD (with all costs related thereto borne by GCS) shall be fulfilled upon FMPA delivering or causing to be delivered the Supplemental C&E to the Supplemental C&E POD, as it may be amended, and FMPA will have no obligation or responsibility beyond such Supplemental C&E POD.

(c) Billing, metering, and all other technical and operational aspects and matters related to this contract shall be handled by the parties in accord with the terms and conditions of the ARP Contract, unless otherwise provided for in this contract. After the Service Effective Date, and for the Term of this contract, FMPA will provide to the City a monthly bill that separately states the charges for the Supplemental C&E.

**Section 6. Transmission and Ancillary Services.** (a) After the effectiveness of this Agreement, FMPA will continue to provide for the City to receive all needed transmission service for its electric load to be provided for under FMPA's Network Integration Transmission Service Agreement ("**NITSA**") with FPL, and to include the City's electric demand in the Florida Municipal Power Pool ("**FMPP**"), or its successor, balancing area; and as a result, provide all ancillary services for the City as a part of the Supplemental C&E.

(b) All costs, charges, fees, or other expenses associated with, arising out of, related to, occasioned by, or otherwise due to the delivery of GCS's CROD C&E, Supplemental C&E, and St. Lucie Power Entitlement Share, to their points of delivery, including any associated losses, shall be payable to FMPA by GCS in accordance with the terms and conditions of the this Agreement, the ARP Contract and St. Lucie Contracts, as applicable. GCS acknowledges that FMPA may include these costs on its regular ARP power bills or its St. Lucie Project bills, or otherwise invoice GCS for these costs, which must be paid by GCS in accord with the applicable ARP Contract or St. Lucie Contracts.

(c) FMPA shall not be responsible for any costs, charges, fees, or other expenses imposed by FPL, or any other entity, for transmitting CROD C&E, Supplemental C&E, or St. Lucie Power Entitlement Share beyond their respective points of delivery, including, without limitation, those associated with, arising out of, related to, occasioned by, or otherwise due to any new or upgraded transmission facilities, or other equipment required in order to include the City's total electric load in FMPA NITSA with FPL. To the extent FMPA is billed for any such costs, charges, fees, or other expenses imposed by FPL or any other entity, FMPA shall invoice GCS, and GCS hereby agrees to reimburse FMPA, as billed by FMPA.

**Section 7. CROD Responsibility Agreement.** In the event that this Agreement terminates prior to the term of the City's ARP Contract, the parties shall cooperate to enter into a subsequent CROD Responsibility Agreement to provide for the technical and operations matters that need to be addressed, if any, for FMPA and the City to provide for the provision of CROD, absent this Agreement. It is understood and agreed by the Parties that a CROD Responsibility Agreement must be entered into before the effectiveness of the termination of this Agreement, to provide for continued reliable service of capacity and energy to the City.

**Section 8. Assignment.** It is understood and agreed that neither party may transfer, sell, mortgage, pledge, hypothecate, convey, designate, or otherwise assign this contract, or any interest in this contract or any rights or obligations under this Agreement, in whole or in part, either voluntarily or by operation of law, (including by merger, consolidation, or otherwise), without the express written consent of the other party (and any such attempt shall be void), which consent shall not be unreasonably conditioned, withheld or delayed. Subject to the foregoing, this Agreement shall inure to the benefit of and be binding upon the parties and their respective successors and permitted assigns.

**Section 9. No Third-Party Beneficiaries.** This Agreement is solely for the benefit of FMPA and the City and no right nor any cause of action shall accrue upon or by reason, to or for the benefit of any third party not a formal party to this Agreement. Nothing in this Agreement, expressed or implied, is intended or shall be construed to confer upon any person or corporation other than FMPA and the City, any right, remedy, or claim under or by reason of this Agreement; or any of the provisions or conditions of this Agreement; and all provisions, representations, covenants and conditions contained in this Agreement shall inure to the sole benefit of and be binding upon FMPA and the City and their respective representatives, successors, and permitted assigns.

**Section 10. Entire Agreement.** This instrument shall constitute the final complete expression of this Agreement between FMPA and the City relating to the subject matter of this contract.

**Section 11. Good Faith Dealings.** The parties agree to cooperate in good faith with each other in their respective performance hereunder and in carrying out and giving effect to the provisions of this Agreement, including, without limitation, the execution and filing of applications for authorizations, permits and licenses with governmental authorities, and the execution of such



other documents and taking of such actions as may be reasonably necessary to carry out the provisions of this Agreement.

**Section 12. Notices.** (a) Each party giving or making any notice, request, demand, or other communication (each, a “**notice**”) pursuant to this Agreement shall give the notice in writing and shall use one of the following methods of delivery, each of which for purposes of this contract is a writing: (1) personal delivery; (2) registered or certified mail, in each case, return receipt requested and postage prepaid; (3) nationally recognized overnight courier, with all fees prepaid; (4) electronic mail with electronic confirmation of the addressee opening the electronic mail (i.e., read receipt) or (5) facsimile.

(b) Each party giving a notice shall address the notice to the appropriate person at the receiving party (the “**Addressee**”) at the address listed below or to another Addressee or at another address designated by a party in a notice pursuant to this section 12:

If to FMPPA: Florida Municipal Power Agency  
8553 Commodity Circle  
Orlando, Florida 32819-9002  
Attention: Chief Operating Officer  
Facsimile No.: (407) 355-5794  
Telephone No. (for verification purposes only): (407) 355-7767

With a required copy to: Florida Municipal Power Agency  
OFFICE *of the* GENERAL COUNSEL  
2061-2 Delta Way (32303-4240)  
Post Office Box 3209  
Tallahassee, Florida 32315-3209  
Facsimile No.: (850) 297-2014  
Telephone No. (for verification purposes only): (850) 297-2011

If to the City:

With a required copy to:

(c) Except as provided elsewhere in this Agreement, a notice is effective only if the party giving or making the notice has complied with subsections (a) and (b) and if the Addressee has received the notice. A notice is deemed to have been received as follows:

- (1) If a notice is delivered in person, or sent by registered or certified mail, or nationally recognized overnight courier, upon receipt as indicated by the date on the signed receipt.
- (2) If a notice is sent by facsimile, upon receipt by the party giving or making the notice of an acknowledgment or transmission report generated by the machine from which the facsimile was sent indicating that the facsimile was sent in its entirety to the Addressee's facsimile number.
- (3) If the Addressee rejects or otherwise refuses to accept the notice, or if the notice cannot be delivered because of a change of address for which no notice was given, then upon the rejection, refusal, or inability to deliver.
- (4) Despite the other clauses in this subsection (c), if any notice is received after 5:00 p.m. on a business day where the Addressee is located, or on a day that is not a business day where the addressee is located, then the notice is deemed received at 9:00 a.m. on the next business day where the Addressee is located.

**Section 13. Governing Law.** The validity and interpretation of this Agreement and the right and obligations of the parties under this Agreement shall be governed and construed in accordance with the laws of the State of Florida without regard for any conflicts of law provisions that might cause the law of other jurisdictions to apply.

**Section 14. Venue.** All controversies, claims, or disputes arising out of or related to this Agreement or any agreement, instrument, or document contemplated hereby, shall be brought exclusively in the state or federal courts located in Florida, as appropriate. The parties consent to and agree to submit to the personal jurisdiction of such courts. Each of the parties hereby waives, and agrees not to assert in any such controversy, claim, or dispute, to the fullest extent permitted by applicable law or other legal restrictions on a party, any argument or claim that: (1) such party is not personally subject to the jurisdiction of such courts, (2) such party and such party's property is immune from any legal process issued by such courts, or (3) any litigation or other process commenced in such courts is brought in an inconvenient forum.

**Section 15. Severability.** Wherever possible, each provision of this Agreement is to be interpreted in such a manner as to be effective and valid under applicable law. Should any portion of this contract be declared invalid for any reason, such declaration shall have no effect upon the remaining portions of this Agreement. In the event any provision of this Agreement is held by any tribunal of competent jurisdiction to be contrary to applicable law, the remaining provisions of this Agreement shall remain in full force and effect.

**Section 16. Amendment.** No amendment to this Agreement is valid unless mutually agreed and signed by both parties.

**Section 17. All-Requirements Project Responsibility.** For FMPA, this Agreement is a liability and obligation of the All-Requirements Power Supply Project only. No FMPA liability or

obligation under this Agreement inures to or binds any of the funds, accounts, monies, property, instruments, or rights of the Florida Municipal Power Agency generally or any of any other "project" of FMPA as that term is defined in the Interlocal Agreement Creating Florida Municipal Power Agency, as supplemented and amended.

**Section 18. Counterparts.** This Agreement may be executed in counterparts, each of which is deemed to be an original, but all of which together shall constitute one and the same instrument.

*[Signature Page Follows]*

DRAFT

The parties are signing this supplemental power and ancillary services contract as of the date stated in the introductory paragraph.

FLORIDA MUNICIPAL POWER AGENCY (ALL-REQUIREMENTS POWER SUPPLY PROJECT)

By: \_\_\_\_\_  
Jacob A. Williams  
General Manager and CEO

ATTEST:

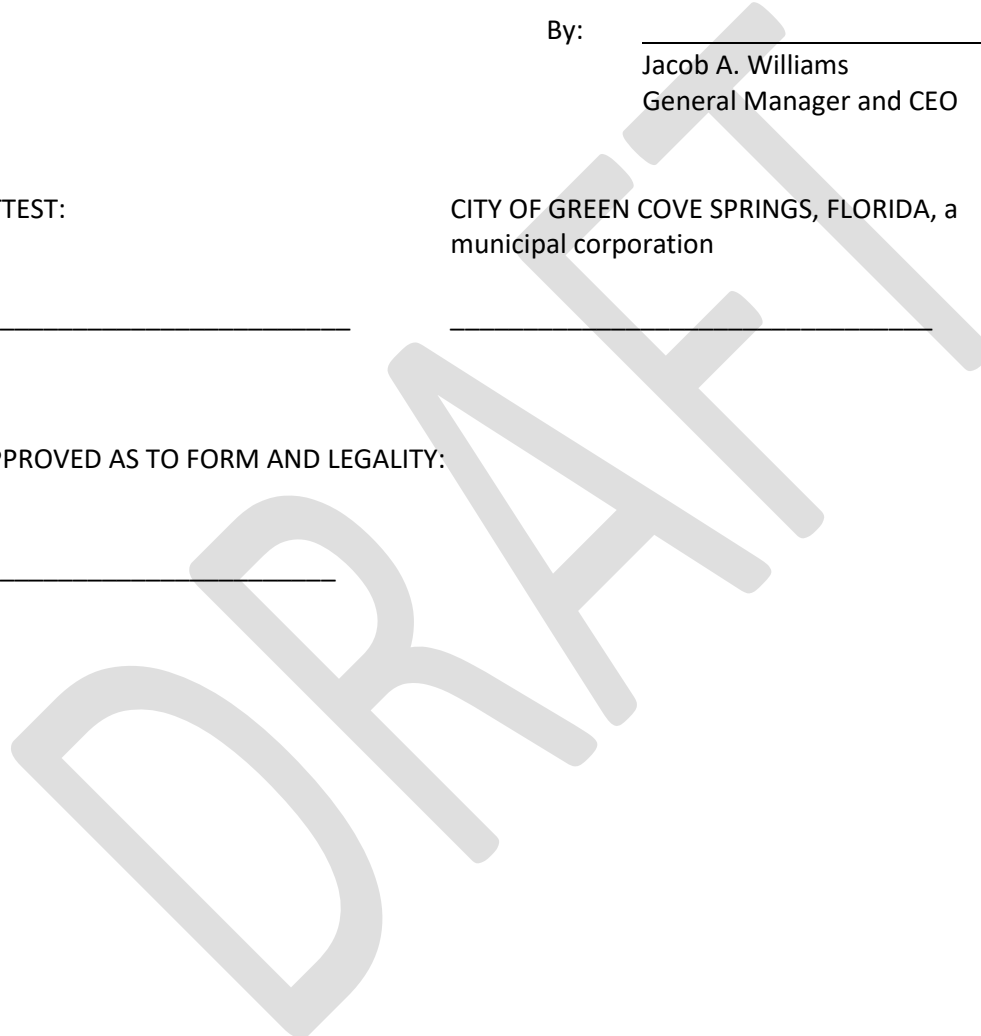
CITY OF GREEN COVE SPRINGS, FLORIDA, a  
municipal corporation

\_\_\_\_\_

\_\_\_\_\_

APPROVED AS TO FORM AND LEGALITY:

\_\_\_\_\_



**AGENDA ITEM 9 – INFORMATION ITEMS**

- c) Compliance Certificate Relating to Resolution 2019-EC2**

**Executive Committee  
April 18, 2019**



## **EC 9c –Compliance Certificate on the Use of Vero Beach Proceeds**

April 18, 2019

# Requirement of Resolution 2019- EC2

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- Resolution 2019-EC2 was approved at the February 14, 2019 Executive Committee (EC) meeting
- Section 2 required that a Compliance Certificate be signed off by Howard McKinnon, Chairperson of the EC; Linda S. Howard, CFO; and Jody Finklea, General Counsel and CLO
- In complying with Section 2 of the Resolution, FMPA has
  - Set aside no less than \$30 million to be made available for the needs of the All Requirements Project
  - Used \$74.6 million to pay off principal and swap termination fees related the ARP 2008C Bonds
  - Executed the Compliance Certificate and is presenting it to the EC today

# Conclusion

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- For information only. No action needed



**COMPLIANCE CERTIFICATE RELATING  
TO RESOLUTION 2019-EC2**

Pursuant to Resolution 2019-EC2 (the “Resolution”) relating to the All-Requirements Power Supply Project (the “ARP Project”) adopted by the Executive Committee of the Florida Municipal Power Agency (the “Agency” or “FMPA”) on February 14, 2019, **WE**, Howard McKinnon, Chairperson of the Executive Committee of the Agency, and Linda S. Howard, Chief Financial Officer of the Agency, in accordance with such Resolution, **DO HEREBY CERTIFY** as follows:

1. In accordance with Section 2 of the Resolution, FMPA has set aside no less than \$30 million of the monies it received from the City of Vero Beach in connection with the sale of Vero Beach’s retail electric utility system to Florida Power & Light Company to be made available for the needs of the All-Requirements Power Supply Project. In addition, FMPA has utilized \$74,628,766 of the monies that were not required to be set aside to redeem certain of the maturities of FMPA’s All-Requirements Power Supply Project Variable Rate Demand Refunding Revenue Bonds Series 2008C (the “Series 2008C Bonds”) on April 1, 2019 and to terminate, in whole or in part, the Qualified Swaps relating to the Series 2008C Bonds on March 18, 2019 and March 19, 2019 and to pay any amounts owed in connection with such terminations on March 20, 2019 and March 21, 2019.

2. Capitalized terms not defined in this Compliance Certificate have the meanings ascribed to them in the All-Requirements Power Supply Project Revenue Bond Resolution adopted by FMPA on March 22, 1985, as amended and restated in its entirety on May 23, 2003, as supplemented and amended to the date hereof.

*[Remainder of page intentionally left blank; signatures appear on the following page]*

IN WITNESS WHEREOF, we have hereunto set our hands this 2nd day of April, 2019.

**FLORIDA MUNICIPAL POWER  
AGENCY**

By: Howard McKinnon

Name: Howard McKinnon

Title: Chairperson of the Executive  
Committee

By: Linda S. Howard

Name: Linda S. Howard

Title: Chief Financial Officer

Approved as to form and legality:

By: Jody L. Finklea

Name: Jody L. Finklea

Title: General Counsel and CLO

[SIGNATURE PAGE FOR COMPLIANCE CERTIFICATE TO RESOLUTION 2019-EC2]

**AGENDA ITEM 9 – INFORMATION ITEMS**

**d) Spiegel McDiarmid Invoice**

**Executive Committee  
April 18, 2019**

FOR PROFESSIONAL SERVICES RENDERED THROUGH January 31, 2019

Our Matter # 01950.008  
 Solar Project Efforts

*CSB*



Services included those detailed in the attached printout.

**SUMMARY OF FEES**

	<u>Hours</u>	<u>Rate/Hr</u>	<u>Amount</u>
A. Drennen	58.75	215.00	12,631.25
C. Bogorad	77.25	445.00	34,376.25
J. Berns	1.25	175.00	218.75
L. Nagengast	10.50	110.00	1,155.00
W. Huang	37.25	400.00	14,900.00
<b>TOTAL</b>	<b>185.00</b>		<b>63,281.25</b>

Less Amount Absorbed by Spiegel & McDiarmid ..... (6,500.64)

Total Fees for Professional Services ..... \$56,780.61

**REIMBURSABLE COSTS**

Local Transportation	2.20
Computer Legal Research	403.34
Printing and Duplicating	55.80
Long Distance Charges	4.69
<b>Total Reimbursable Costs</b> .....	<b>\$466.03</b>

**TOTALS FOR THIS MATTER**

Current Invoice - Fees For Professional Services .....	\$56,780.61
Current invoice - Reimbursable Costs .....	466.03
<b>TOTAL DUE FOR THIS MATTER</b> .....	<b>\$57,246.64</b>

*only James in bill*  
*\$57,246.64 APPROVED*  
*11 - III - 2019*

**AGENDA ITEM 10 – MEMBER COMMENTS**

**Executive Committee  
April 18, 2019**

**AGENDA ITEM 11 – ADJOURNMENT**

**Executive Committee  
April 18, 2019**