



## **ARP EXECUTIVE COMMITTEE AGENDA PACKAGE**

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**August 20, 2020**

**9:15 a.m. [NOTE TIME] (or immediately  
following the Board of Directors Meeting)**

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

**Meeting Number 855 270 349#**

**Meeting Password: 8553**

### **Committee Members**

Howard McKinnon, Havana - Chairman

Lynne Tejeda, Key West – Vice Chairwoman

Jody Young, Bushnell

Lynne Mila, Clewiston

Jan Bagnall, Fort Meade

Paul Jakubczak, Fort Pierce

Robert Page, Green Cove Springs

Allen Putnam, Jacksonville Beach

Larry Mattern, Kissimmee

Brad Chase, Leesburg

Bill Conrad, Newberry

Eric Weaver, Ocala

John Holman, 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: August 11, 2020  
RE: FMPA Telephonic Executive Committee Meeting  
**Thursday, August 20, 2020 at 9:15 a.m. [NOTE TIME]**  
(or immediately following the Board of Directors meeting)  
PLACE: Via Telephone at 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 855 270 349#**  
**PASSWORD 8553#**

**(If you have trouble connecting via phone or internet, call 407-355-7767)**

Chairman Howard McKinnon, Presiding

### AGENDA

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7. Consent Agenda
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**11. Adjournment ..... 99**

**\*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  
August 20, 2020**

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

**Executive Committee  
August 20, 2020**

**AGENDA ITEM 3 – RECOGNITION OF  
GUESTS**

**Executive Committee  
August 20, 2020**

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

**Executive Committee  
August 20, 2020**

# **VERBAL REPORT**

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

**Executive Committee  
August 20, 2020**

# **VERBAL REPORT**

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

**Executive Committee  
August 20, 2020**

**AGENDA ITEM 7 – CONSENT AGENDA**

- a) Approval of Meeting Minutes – Meeting Help July 29, 2020 and ARP Telephonic Rate Workshops Help July 14, 2020**

**Executive Committee  
August 20, 2020**

**CLERKS DULY NOTIFIED .....JULY 21, 2020**  
**AGENDA PACKAGES POSTED.....JULY 20, 2020**

**MINUTES**  
**EXECUTIVE COMMITTEE MEETING**  
**WEDNESDAY, JULY 29, 2020**  
**FLORIDA MUNICIPAL POWER AGENCY**  
**8553 COMMODITY CIRCLE**  
**ORLANDO, FL 32819**

**PARTICIPANTS**  
**PRESENT:**

Jody Young, Bushnell (via telephone)  
Lynne Mila, Clewiston (via telephone)  
Jan Bagnall, Fort Meade (via telephone)  
Paul Jakubczak, Fort Pierce (via telephone)  
Bob Page, Green Cove Springs  
Howard McKinnon, Havana (via telephone)  
Allen Putnam, Jacksonville Beach  
Lynne Tejeda, Key West (via telephone)  
Larry Mattern, Kissimmee  
Eric Weaver, Ocala  
John Holman, Starke

**OTHERS**  
**PRESENT**

John Tompeck, Fort Pierce (via telephone)  
James Braddock, Wauchula  
Craig Dunlap, Dunlap & Associates, Inc. (via telephone)  
Rafael Couret, Power Engineers (via telephone)

**STAFF**  
**PRESENT**

Jacob Williams, General Manager and CEO  
Jody Finklea, Deputy General Counsel (via telephone)  
Ken Rutter, Chief Operating Officer  
Linda Howard, Chief Financial Officer (via telephone)  
Carol Chinn, Chief Information and Compliance Officer  
Cairo Vanegas, Manager of Member Services Development  
Dan O'Hagan, Assistant General Counsel  
Rich Popp, Treasurer and Risk Director  
Mark McCain, Assistant General Manager, Member Services  
and Public Relations  
Sharon Adams, Human Resources Director  
Sue Utley, Executive Asst. /Asst. Secy. to the Board  
Susan Schumann, Manager of External Affairs and Solar Projects  
Mike McCleary, Manager of Member Services Development  
David Schumann, Power Generation Fleet Director  
Isabel Montoya, IT Specialist

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

Chairman Howard McKinnon, Havana, called the FMPA Executive Committee Meeting to order at 11:00 a.m., Wednesday July 29, 2020 in the Frederick M. Bryant Board Room at Florida Municipal Power Agency 8553 Commodity Circle, Orlando, Florida. The roll was taken, and a quorum was declared with 11 members present out of a possible 13.

### **ITEM 2 – SET AGENDA (BY VOTE)**

**MOTION:** Allen Putnam, Jacksonville Beach, moved approval of the agenda as presented. Larry Mattern, Kissimmee, seconded the motion. Motion carried 11 – 0.

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

None

### **ITEM 4 – PUBLIC COMMENTS**

None

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

Chairman McKinnon said he was sorry he couldn't be at the meeting in person this time and looks forward to seeing everyone at FMPA for the next meeting.

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

Jacob Williams discussed the possibility of the ARP Executive Committee adopting a coal policy stating the ARP members are not interested in obtaining any more coal resources. There was a consensus from the members so this item will be on the August agenda as an action item.

## **ITEM 7 – CONSENT AGENDA**

**Item 7a – Approval of Meeting Minutes – Meeting Held June 18, 2020 and ARP Telephonic Rate Workshop Held June 11, 2020**

**Item 7b – Approval of the Treasury Reports – As of May 31, 2020**

**Item 7c – Approval of the Agency and All-Requirements Project Financials as of May 31, 2020**

**MOTION:** Larry Mattern, Kissimmee, moved approval of the Consent Agenda as presented. Allen Putnam, Jacksonville Beach, seconded the motion. Motion carried 11 – 0.

## **ITEM 8 – ACTION ITEMS**

**a. Approval of Replacement of FEM Legacy Tools, PCI Gen Portal**

**MOTION:** Larry Mattern, Kissimmee, moved approval of Change Order No 1 to the Software License and General Consulting Agreement with Power Cost, Inc. and the associated Task Order and authorize the General Manager & CEO to execute both documents upon approval by Orlando Utilities Commission and Lakeland Electric. Eric Weaver, Ocala seconded the motion. Motion carried 11 – 0.

**b. Nomination and Election of Executive Committee Officers for 2020-2021**

**MOTION:** Larry Mattern, Kissimmee, nominated Howard McKinnon, Havana, as Chair. Allen Putnam, Jacksonville Beach, seconded the motion. Allen Putnam, Jacksonville Beach, nominated Lynne Tejeda, Key West, as Vice Chair. Eric Weaver, Ocala, seconded the motion. Motion carried 11 – 0.

## **ITEM 9 – INFORMATION ITEMS:**

**Item 9a – Update on Transmission Rate Cases**

Ken Rutter reported on the transmission rate cases FMPA has with Florida Power & Light and Duke Energy Florida.

**Item 9b – Notice of Annual Continuing Disclosure Report for the Fiscal Year Ended September 30, 2019**

Ed Nunez reported on the filing of the Annual Continuing Disclosure Report for the Fiscal Year Ended September 30, 2019.

**ITEM 10 – MEMBER COMMENTS**

Eric Weaver, Ocala, thanked Jacob and the FMPA staff for updating the Value of the Utility for the City of Ocala. The municipal utilities are a benefit to the cities and fellow members.

**ITEM 11 – Adjournment**

There being no further business, the meeting was adjourned at 11:19 a.m.

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Howard McKinnon  
Chairman, Executive Committee

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Sue Utley  
Assistant Secretary

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

Seal

**PUBLIC NOTICE SENT TO CLERKS .....JULY 13, 2020**  
**AGENDA PACKAGES SENT TO MEMBERS .....JULY 13, 2020**

**MINUTES  
EXECUTIVE COMMITTEE  
ALL-REQUIREMENTS POWER SUPPLY PROJECT  
TELEPHONIC RATE WORKSHOP  
TUESDAY, JULY 14, 2020  
FLORIDA MUNICIPAL POWER AGENCY  
8553 COMMODITY CIRCLE  
ORLANDO, FLORIDA 32819**

**COMMITTEE MEMBERS PRESENT VIA TELEPHONE**

Christina Simmons, Bushnell  
Lynne Mila, Clewiston  
Paul Jakubczak, Fort Pierce  
Bob Page, Green Cove Springs  
Howard McKinnon, Havana  
Allen Putnam, Jacksonville Beach  
Lynne Tejada, Key West  
Larry Mattern, Kissimmee  
Sabrina Hubbell, Leesburg  
Bill Conrad, Newberry  
Maria Brooke, Ocala

\*arrived after roll call.

**COMMITTEE MEMBERS ABSENT**

Fred Hilliard, Fort Meade  
Bob Milner, Starke

**STAFF PRESENT**

Jacob Williams, General Manager and CEO  
Ken Rutter, Chief Operating Officer  
Jason Wolfe, Financial Planning, Rates and Budget Director  
Bianca Scott, Human Resources, Administrative Specialist

### **Item 1 – Call to Order**

Howard McKinnon called the Executive Committee All-Requirements Telephonic Rate Workshop to order at 2:00 p.m. on Tuesday, July 14, 2020, via telephone. A speaker telephone for public attendance and participation was located in the Accounting Conference Room at Florida Municipal Power Agency, 8553 Commodity Circle, Orlando, Florida.

### **Item 2 – Information Items**

Jason Wolfe gave a verbal update on the natural gas markets; provided an overview of the June loads and reviewed the June ARP rate calculation.

### **Item 3 – Member Comments**

There being no further business, the meeting was adjourned at 2:12 p.m.

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Approved

AP/bs

**AGENDA ITEM 7 – CONSENT AGENDA**

- b) Approval of Treasury Reports as of June 30, 2020**

**Executive Committee  
August 20, 2020**



## AGENDA PACKAGE MEMORANDUM

TO: FMPA Executive Committee  
FROM: Gloria Reyes  
DATE: August 20, 2020  
ITEM: EC 7(b) – Approval of the All-Requirements Project Treasury Reports as of June 30, 2020

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

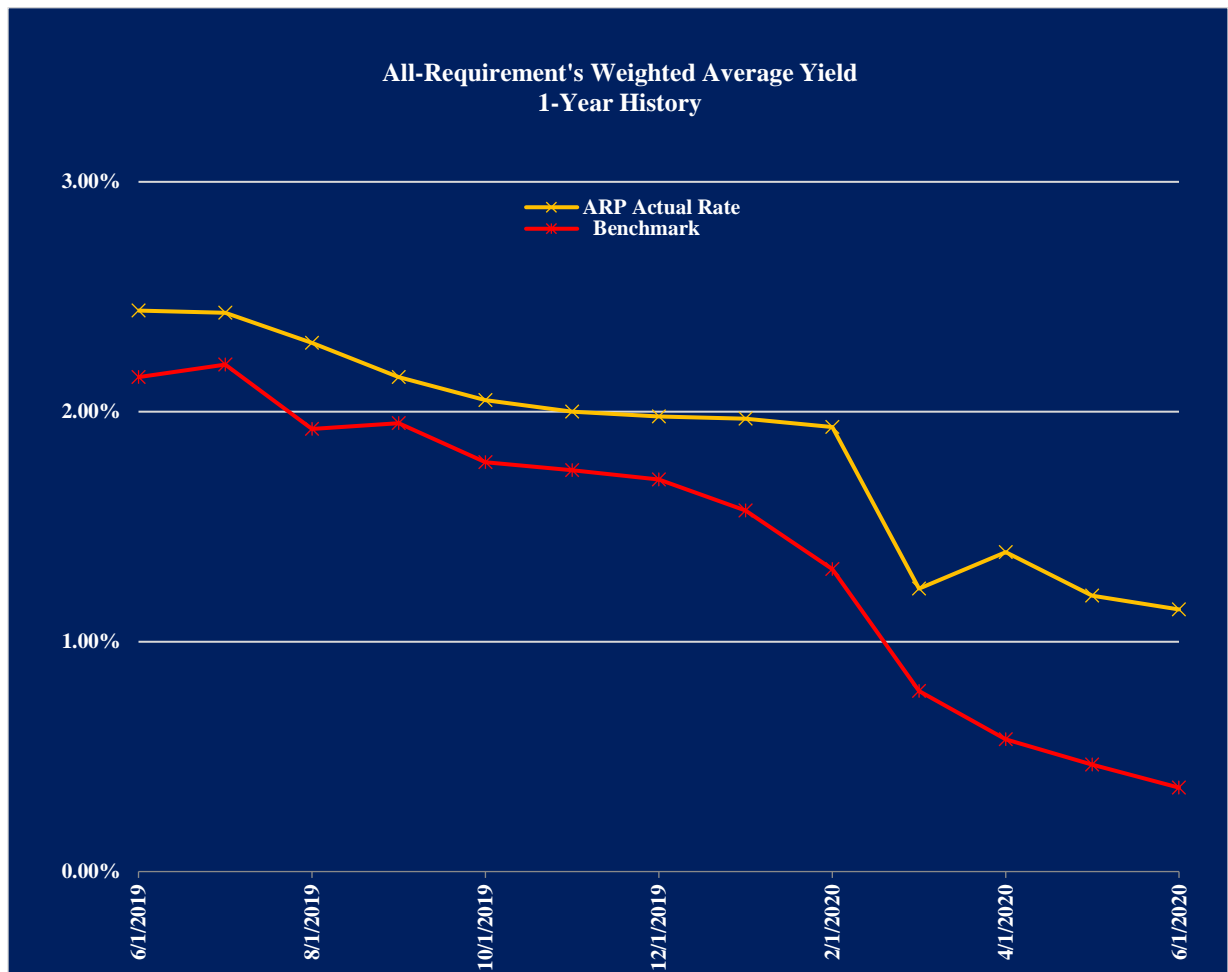
The All-Requirements Project has fixed rate debt. The fixed rate percentage of total debt is 100%. The estimated debt interest funding for fiscal year 2020 as of June 30, 2020 is \$38,747,561.28. The total amount of debt outstanding is \$785,140,000.

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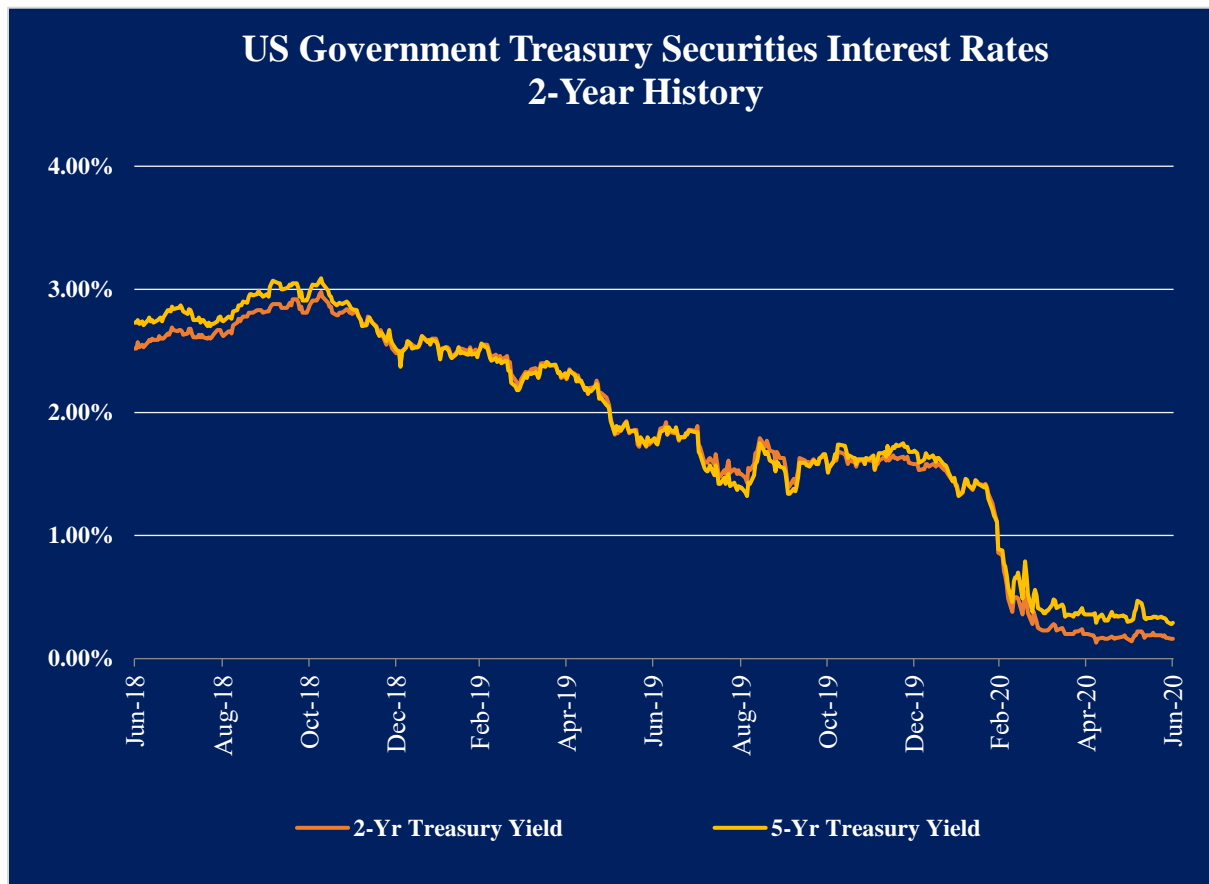
Investment Discussion

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, Certificates of Deposits, Corporate Notes, Commercial Paper, Local Government Investment Pools and Money Market Mutual Funds.

As of June 30, 2020, the All-Requirements Project investment portfolio earned a weighted average yield of 1.14%, 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 US Treasury yields for the past 2 years. The orange line is the 2-year Treasury which closed the month of June at .16%. The yellow line is the 5-year Treasury which was .29%.



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

Recommended  
Motion

Move for approval of the Treasury Reports for June 30, 2020

**AGENDA ITEM 7 – CONSENT AGENDA**

- c) Approval of the Agency and All-Requirements Project Financials as of June 30, 2020**

**Executive Committee  
August 20, 2020**



Linda S. Howard, CPA, CTP  
Chief Financial Officer

## MEMORANDUM

**TO:** FMPA Executive Committee  
**FROM:** Linda Howard  
**DATE:** August 11, 2020  
**SUBJECT:** EC 7c – Approval of the Agency and All-Requirements Project Financials for the period ended June 30, 2020

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**Discussion:** The summary and detailed financial statements of the Agency and All- Requirements Project for the period ended June 30, 2020 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 June 30, 2020.

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LH/GF

## **AGENDA ITEM 8 – ACTION ITEMS**

- a) Approval of FMPA's ARP Policy on Added Coal Generation Exposure**

**Executive Committee  
August 20, 2020**



# EC 9a – Approval of FMIPA’s ARP Policy on Added Coal Generation Exposure

FMIPA Executive Committee

August 20, 2020

# Outline of Proposed ARP Coal Addition Policy

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- Stanton 1 & 2 coal units have provided FMPA's ARP with price stability against volatile natural gas price spikes in late 1990's -2011
- Stanton 1 & 2 has significant emission controls that led to emissions rates that were below the industry average for particulate matter, NO<sub>x</sub>, and SO<sub>2</sub>
- Since ~2010, there has been tremendous reduction in cost of drilling new natural gas wells and cost decreases. As a result, natural gas prices moved down from \$6 - 8/mmbtu to \$2 - 4/mmbtu in last 10 years
- Decreases in natural gas costs has led to FMPA's combined cycle (CC) units to be significantly lower cost than coal units over the last 5 - 8 years
- FMPA's CC's have significantly lower emission rates over coal generation in particulate matter, NO<sub>x</sub>, SO<sub>2</sub> and CO<sub>2</sub>
- FMPA's ARP wants to continue to improve its cost and environmental performance for the benefit of each Participant
- The November election could lead to a significant change in environmental policy, requiring significant CO<sub>2</sub> reductions and potentially eliminate all CO<sub>2</sub> emissions by 2035. Additionally, CO<sub>2</sub> taxes are being seriously proposed in Congress
- These proposals would add significant cost to operation of coal units or require them to not operate
- Therefore, it is reasonable for FMPA's ARP to not increase its exposure to coal-fired generation, including Stanton 1 & 2, unless there is significant change in fuel price relationships and technological improvements in efficiency and emissions

## **FMPA'S ARP POLICY ON ADDED COAL GENERATION EXPOSURE**

1. The Stanton Units 1 and 2 have historically provided FMPA's ARP Participants with price stability against the volatile natural gas price spikes of the late 1990's through 2011 timeframe.
2. During that time, Stanton Units 1 and 2 had significant emission controls that led to emissions rates that were below the industry average for particulate matter, NO<sub>x</sub>, and SO<sub>2</sub>.
3. Since about 2010, there has been a tremendous reduction in the cost of drilling new natural gas wells and the cost decreases continue in that area in a number of different ways. The result of these advances have been natural gas costs trending down from \$6 - 8/mmBtu to the \$2 - 4/mmBtu in the last several years.
4. This decrease in natural gas costs has led to FMPA's combined cycle units being significantly lower cost supply sources than coal units over the last 5 - 8 years, with a much better emissions profile.
5. The combined cycle units that FMPA owns and operates have significantly lower emission rates over coal generation in areas including particulate matter, NO<sub>x</sub>, SO<sub>2</sub>, and CO<sub>2</sub> emissions.
6. The ARP wants to continue to improve its cost and environmental performance for the benefit of the Project and each Participant.
7. Following the November election, there could be a significant change in environmental policy that would require significant CO<sub>2</sub> reductions and could potentially eliminate all CO<sub>2</sub> emissions by 2035. Additionally there are several forms of CO<sub>2</sub> taxes that are being proposed in Congress.
8. Many of these proposals would add significant cost to the operation of coal units or require them to not operate.
9. Therefore, it is the policy of the Executive Committee that, under the present circumstances, the ARP not increase its exposure to coal-fired generation resources, particularly a greater commitment to Stanton Units 1 and 2.

## **AGENDA ITEM 9 – INFORMATION ITEMS**

- a) 2020 Load Forecast Results and 2021 Load Forecast Schedule**

**Executive Committee  
August 20, 2020**



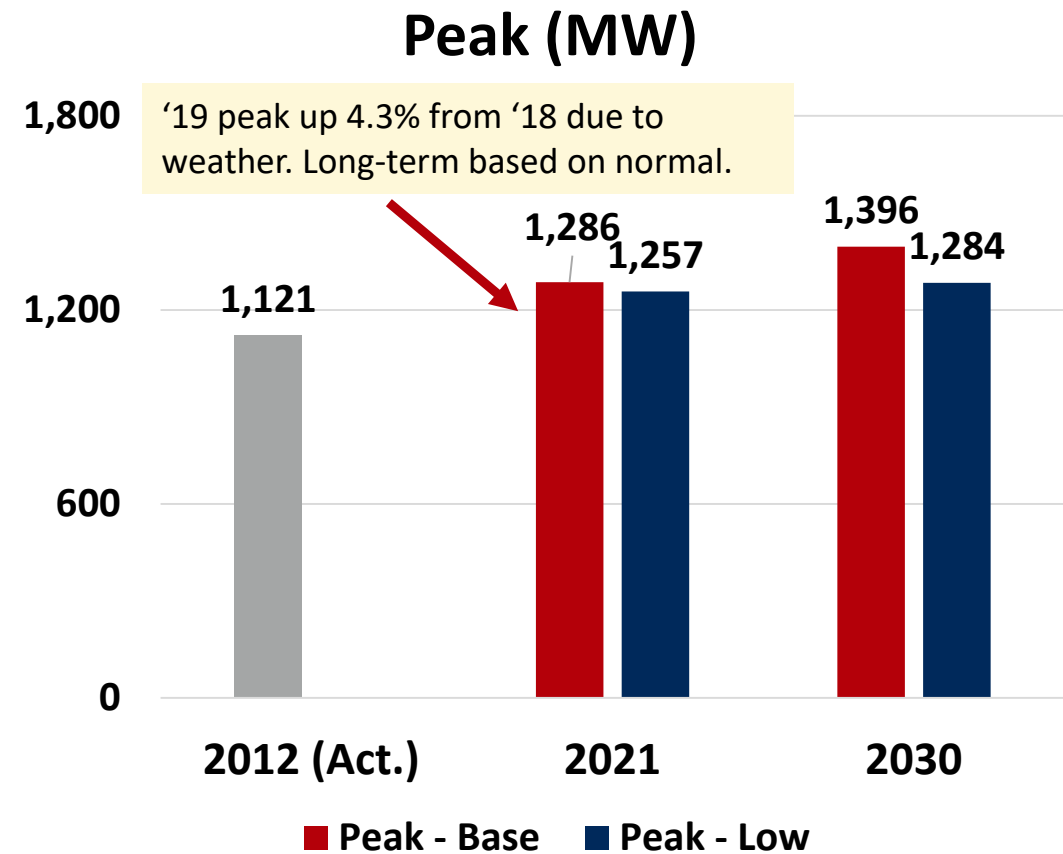
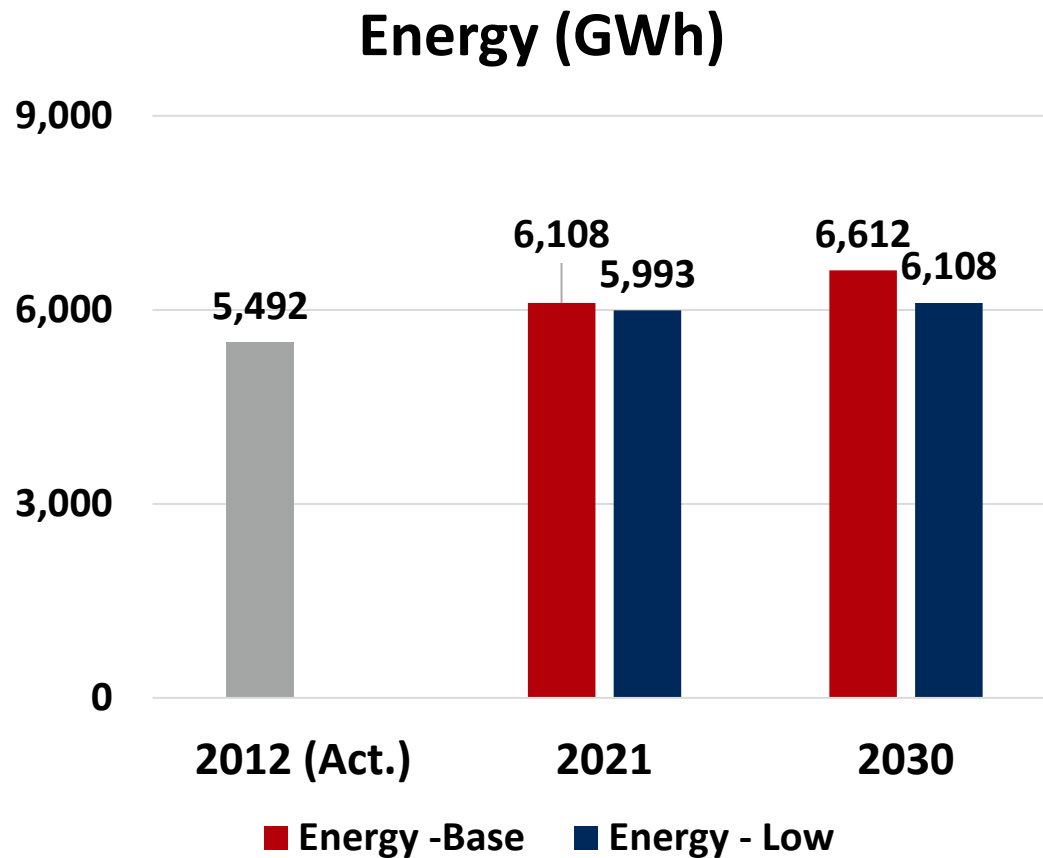
# **EC 9a – 2020 Load Forecast Results and 2021 Load Forecast Schedule**

Executive Committee

August 20, 2020

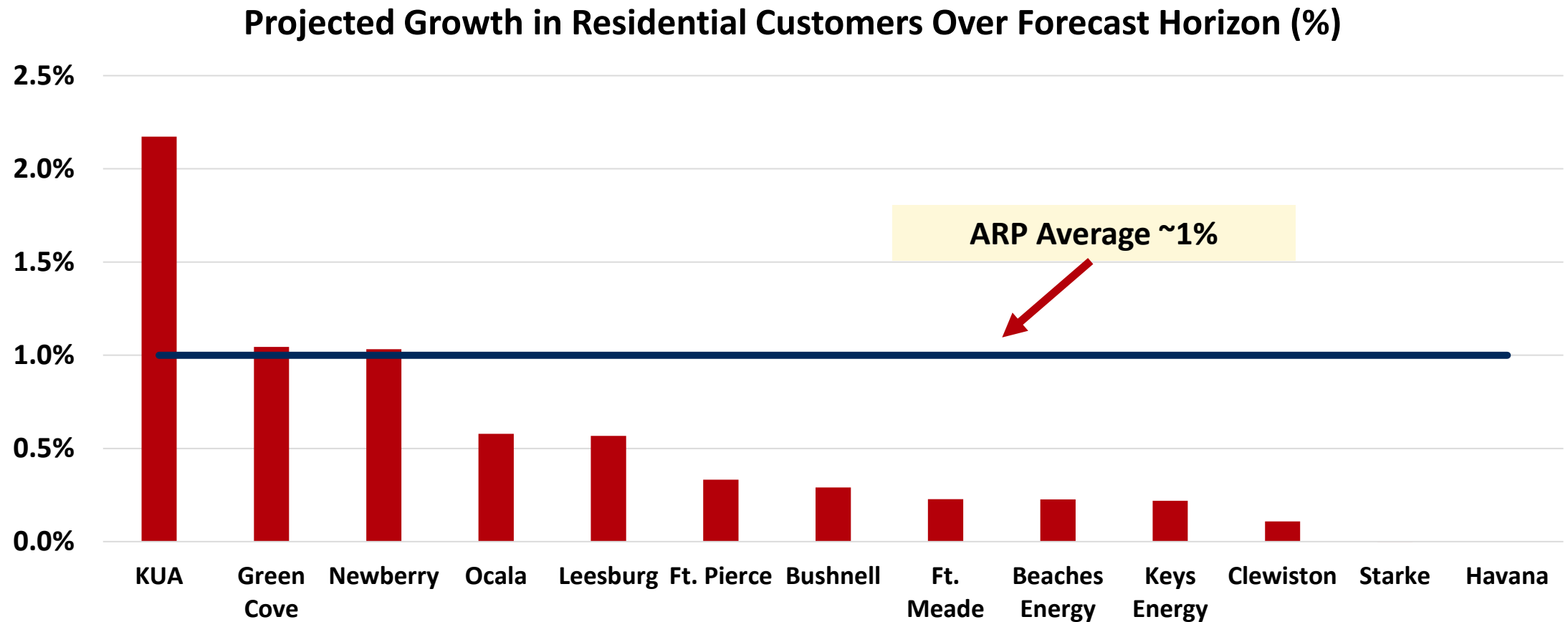
# Base Case Energy and Peak Grow ~0.9% Per Year\*

*Post-Recession ('12-'19) Growth At ~2.1% Per Year w/Hot 2019*



# Residential Customer Growth Primary Driver

*Consistent with Prior Several Years of Forecasts, ARP Avg. ~1%*



# Before COVID Onset, Economic Fundamentals Strong

## *All Metrics Were Materially Better than Recession Era\**

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Economic Indicator	2012 Value	2019 Value
Home Price Index (\$2016)	153,928	251,072
Gross State Product (\$2012; \$M)	769,309	950,759
Unemployment Rate	8.5%	3.3%
Total Employment (Ths.)	10,256	12,375
Construction Employment (Ths.)	502	745
Tourist Visitation Counts (millions)	89.7	127.0**

\*Sources: Florida Association of Realtors, Bureau of Economic Analysis, Bureau of Labor Statistics, Woods and Poole Economics, Inc., and Visit Florida.

\*\*Represents most recent data available (2018).

# COVID-Related Issues Being Monitored Daily

## *Employment, Delinquencies, Other Error Sources*

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- Short-term issues
  - Adjusting for weather effects daily can shed light on:
    - Error in base economic data
    - Random variability not captured by the models
    - COVID-related effects
  - Energy per day accumulation typically accrues faster in the back half of summer months – daily monitoring ramp adjusted based on a 10 year average of daily energy
- Longer term issues
  - Increased delinquencies
  - Reduced capacity operation may impact general service/small commercial customers that may close
  - How much can warm weather do to make up the difference?
    - March energy was 9.5% above budget due to run up in middle of month
  - U-6 (unemployment + *underemployment*\*) at 22.8% for April – highest value since start of U-6 in '94



# 2021 Load Forecast Schedule

# Load Forecast Cycle Accelerated for 2021

## *Hope to Obtain More Timely Intelligence for Budgeting*

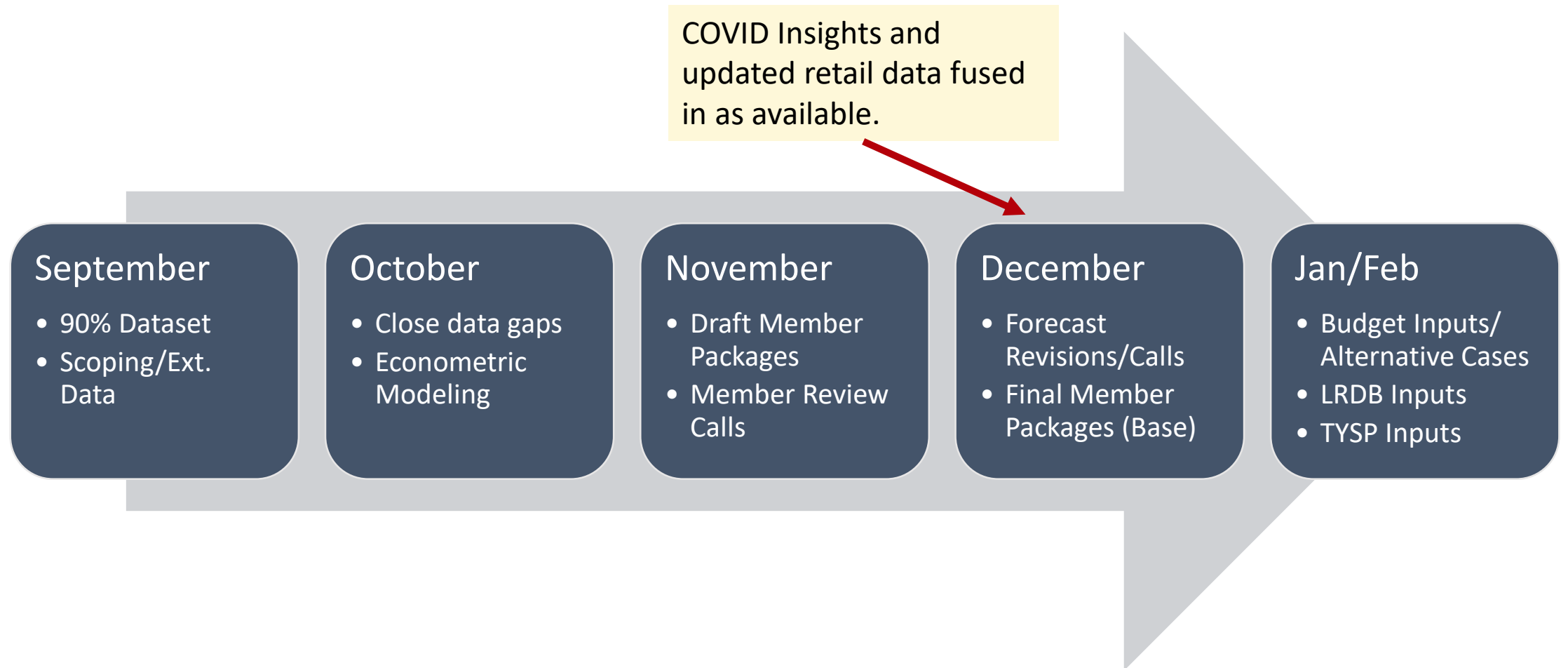
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- Historically, FMPA has used the forecast completed around this time of year (2020 forecast) to feed:
  - Load and Resource Database (March)
  - Ten-Year Site Plan (April)
  - Production Cost Modeling for coming fiscal year budget (Feb-April)
- Allowed for more extensive feedback process and schedule flexibility, but reflects long gap between when forecasts are developed and the timeframe for which they are used
- First month of fiscal year 2022 (October 2021) is ***more than a year removed from when load forecasts were developed***
- COVID related uncertainty & budget cycle drive need for different approach

# Updated Schedule More Aggressive and Condensed

*Staff will Coordinate with Members on Feedback Loops*

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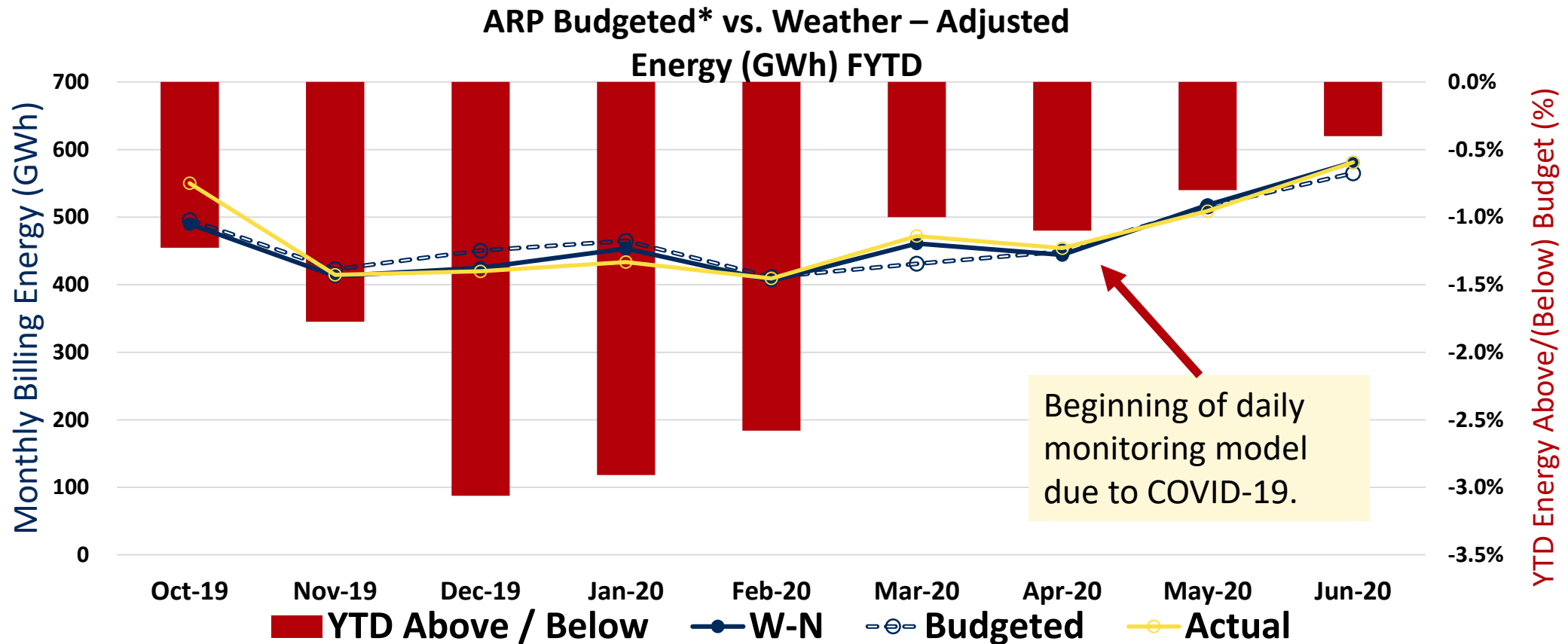




# Appendix

# Weather-Adjusted Sales Right At Budget YTD\*

*Trend Has Been More Length in Winter, Catch-up in Summer*



# Recession Downside 6%, Weather Upside 2%

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- FMPA worked with nFront to devise two alternative load forecast scenarios to support decision making
  - Recession scenario – simulate models using alternative economic data reflective of a recession 70% as severe as recent Great Recession
  - Alternative Weather – weight the assumed future weather 100% to the prior 6 years
- Bottom Line: recession could result in load loss of 6% (75-80 MW) and persist over 4-5 years, and weather upside could be as much as 2% (~25 MW)
  - **Important: every system will be different due to different customer mix**
- Current reality in terms of economic contraction dwarfs Great Recession, but will hopefully be less protracted

## **AGENDA ITEM 9 – INFORMATION ITEMS**

### **b) Staffing Flexibility for Succession Plan**

**Executive Committee  
August 20, 2020**



# **9b - Staffing Flexibility for Succession Plan**

Executive Committee

August 20, 2020

# Succession Plan Completed Each Year

*In January 2020 we identified 4 critical positions near retirement*

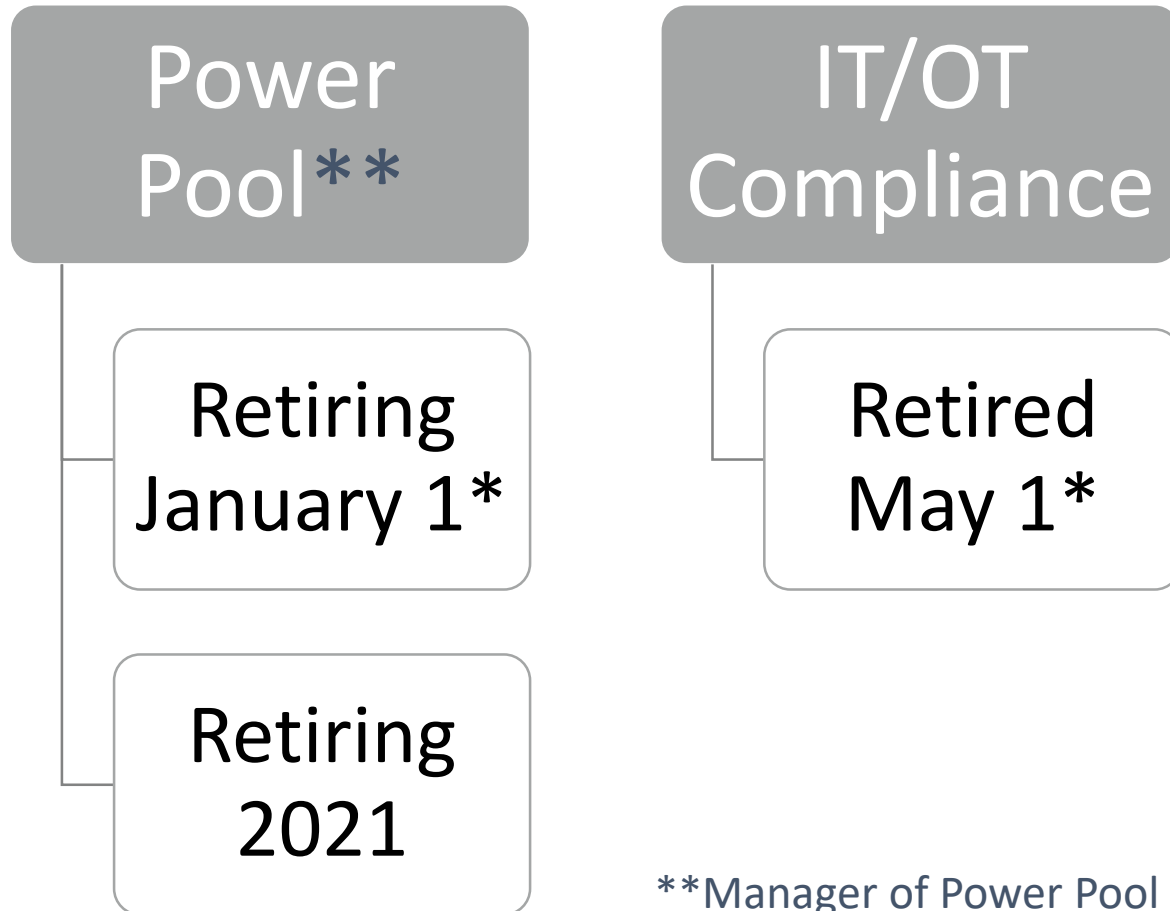
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Department	Qualified by FMPA	Successor Identified	Succession Plan Needed
Communication	Yes	Yes	Within 2 years
Power Pool	Yes	Yes	Within 1 year
Compliance/IT	Yes	Yes	Within 2 years
Human Resources	Yes	No	Within 1 year

# Current Retirements

\*Working reduced schedule for transition period

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\*\*Manager of Power Pool efforts retired late 2019 as well

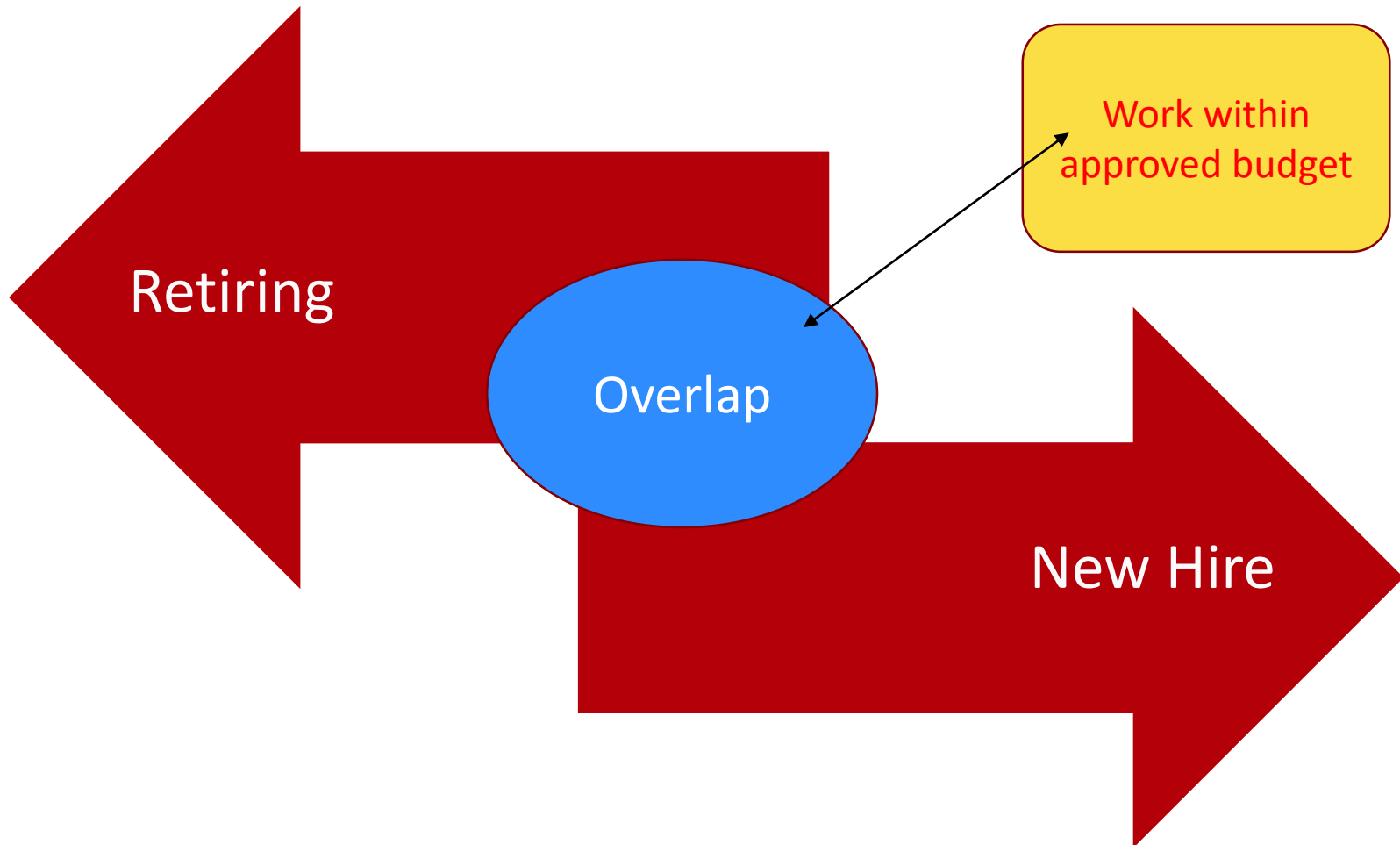
# Flexibility Needed for Staffing Succession Plan

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- Flexibility to fill critical positions prior to retirement date
- Better utilize staff to accomplish strategic initiatives
- Training for critical areas takes time
- Transfer of knowledge is critical
- Approximately one – three months for critical roles
  - More planning needed if multiple people in area likely to retire in short timeframe like we are facing currently
- Budget position flexibility only needed when fully staffed and no open boxes
- When fully staffed is the only time we need the flexibility
- Budget resolution doesn't allow flexibility

# Temporarily Overstaff

## *Planned Retirements*



# Suggested Change to Budget Resolution

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SECTION VI. Approval of Staffing Levels; Merit and Promotion. (A) There are a total of 72 authorized Agency staff positions set forth in the Fiscal Year 2021 Budget Book, as shown on the sheet entitled “FMPA Organization Chart.” The General Manager has the authority to manage and control the organization of Agency staff as appropriate to meet the needs of the Agency, including making changes to position descriptions, salary grades, functional duties, employee classifications, and organizational structure, **except that no increases to the number of Agency staff in addition to the 72 positions authorized by this resolution may be made without prior Executive Committee approval.**

# Information Item

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Allow the General Manager and CEO the flexibility to overstaff when retirees are transitioning. This will only occur when we are fully staffed for a period not to exceed three months and no more than two positions at a time. This will help to ensure staffing needs are met to accomplish the goals and strategic initiatives of the Agency.

## **AGENDA ITEM 9 – INFORMATION ITEMS**

- c) FMPA/Origis Letter Agreement Regarding  
Waiver of Interest on Performance  
Assurance**

**Executive Committee  
August 20, 2020**



# **BOD 9c EC 9c – Approval of FMIPA/Origis Letter Agreement Regarding Waiver of Interest on Performance Assurance**

Board of Directors  
Executive Committee  
August 20, 2020

# Solar II Power Purchase Agreements

## *Origis has paid Performance Assurance to FMPA*

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- Pursuant to Section 9.3(a), Origis (Seller) has paid to FMPA Performance Assurance of \$3,745,000 in the form of cash as required by the PPAs. Section 9.3.(a) reads as follows:
  - 9.3(a) Seller's Performance Assurance. Seller agrees to deliver to Buyer and thereafter maintain in full force and effect for the remainder of the Term, Performance Assurance in the amount of twenty-five thousand dollars per MW (\$25,000/MW) of Buyer's Share of the Expected Project Capacity or Installed Capacity, as applicable, within thirty (30) Days following the Effective Date.

# PPA Provision to Pay Interest at Prime Rate

## *Unintended financial loss for Solar II Participants*

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- Section 9.3(d) currently requires FMPA (Buyer) to pay interest on cash held at Prime Rate, which is higher than interest actually earned. Section 9.3(d) reads as follows:
  - 9.3(d) A PA Beneficiary shall pay interest on cash held as Performance Assurance at the Prime Rate

FMPA holds the Performance Assurance for the solar participants in an interest bearing account; ***however, those accounts earn less than the Prime Rate.*** If un-waived, **Section 9.3(d) would result in a net loss** to the Solar II Participants when the Performance Assurance cash is to be returned to Origis.

# Mutual Waiver of Section 9.3(d) Is Proposed

## *Agreement retroactive to include funds already provided*

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- Letter Agreement:
  - Each Party waives Section 9.3(d) requirement
  - Each Party shall pay ***only the interest actually earned***
- ***Waiver*** of provision
  - Not amendment or revised interpretation of PPA
  - Resulting provision is reciprocal, fair, and equal to both parties
- Approval of all 12 Solar II Participants required

# Florida Municipal Solar Project

## *Phase II Participants*

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Solar II Project	Total Power Share (MW)	Percentage Share
Homestead	5	9.337
Lake Worth Beach	26.55	49.580
Mount Dora	2	3.735
New Smyrna Beach	10	18.674
Winter Park	10	18.674
<b>TOTAL</b>	<b>53.55 MW</b>	<b>100%</b>

ARP Solar II Participants	Total Power Share (MW)	Percentage Share
Beaches Energy (Jacksonville Beach)	15	15.584
Fort Pierce Utilities Authority	15	15.584
Havana	0.25	0.260
Keys Energy (Key West)	25	25.974
Kissimmee Utility Authority	20	20.779
Newberry	1	1.039
Ocala	20	20.779
<b>TOTAL</b>	<b>96.25 MW</b>	<b>100%</b>

# Proposed Motion for September

*No action required for August*

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- Move approval of execution of FMPA-Origis Letter Agreement:
  - (1) waiving Section 9.3(d) PPA provision that interest on Performance Assurance funds shall be paid at Prime Rate; and
  - (2) agreeing that each Party shall pay only the interest actually earned.

[date]

Johan Vanhee  
Chief Commercial Officer & Chief Procurement Officer  
Origis Energy  
800 Brickell Avenue  
Suite 1100  
Miami, FL 33131

Dear Johan,

The purpose of this letter is to memorialize the understanding among the Florida Municipal Power Agency (“FMPA”) – All-Requirements Power Supply Project, the FMPA Solar Project, and Origis Energy (on behalf of Sellers) regarding the interest rate on Performance Assurance payable under the Solar Power Purchase Agreements (listed below) among the Parties. Capitalized terms used in this letter agreement have the meaning ascribed in the Solar Power Purchase Agreements unless otherwise stated.

The parties have previously entered into the following agreements:

- The Solar Power Purchase Agreement between Florida Municipal Power Agency [ARP] as Buyer and FL Solar 7, LLC as Seller, dated as of December 12, 2019;
- The Solar Power Purchase Agreement between Florida Municipal Power Agency [Solar Project] as Buyer and FL Solar 7, LLC as Seller, dated as of December 12, 2019;
- The Solar Power Purchase Agreement between Florida Municipal Power Agency [ARP] as Buyer and FL Solar 8, LLC as Seller, dated as of December 12, 2019; and
- The Solar Power Purchase Agreement between Florida Municipal Power Agency [Solar Project] as Buyer and FL Solar 8, LLC as Seller, dated as of December 12, 2019.

Pursuant to Section 9.3(a) of each of the above Solar Power Purchase Agreements, Seller has paid FMPA Performance Assurance in the form of cash in an amount required by the Agreements.

Pursuant to Section 9.3(d) of each Solar Power Purchase Agreement, FMPA is required to pay interest on cash held at the Prime Rate.

The parties recognize the FMPA does not earn the Prime Rate on the Performance Assurance cash. Therefore, as evidenced by the signatures below, each Party hereby waives its respective right under Section 9.3(d) of each Solar Power Purchase Agreement to receive the Prime Rate on any cash Performance Assurance it has provided or may hereafter provide to the other Party, and the Parties agree that, notwithstanding Section 9.3(d) of the Solar Power Purchase Agreements, each Party shall be required to pay the other Party only the interest actually earned by the recipient Party on its investment of the cash Performance Assurance. This obligation shall be retroactive to the date FMPA received the Performance Assurance cash from Origis. If requested by a Party, the Party holding cash Performance Assurance shall provide evidence to demonstrate such interest actually earned.

Except as expressly set forth in this letter agreement, the Solar Power Purchase Agreements, and the Parties' obligations thereunder, are not amended or affected in any way. Pursuant to Section 19.4 of the Solar Power Purchase Agreements, the mutual waiver of Section 9.3(d) of such agreements hereunder shall not be deemed a waiver with respect to any other matter.

[Signature page follows]

By signing below, the parties agree to the foregoing effective as of the date last executed below.

**FLORIDA MUNICIPAL POWER AGENCY  
ALL-REQUIREMENTS POWER SUPPLY PROJECT &  
SOLAR PROJECT**

\_\_\_\_\_ Date: \_\_\_\_\_  
Jacob Williams  
General Manager & CEO

**ORIGIS ENERGY**

\_\_\_\_\_ Date: \_\_\_\_\_  
Johan Vanhee  
Chief Commercial Officer & Chief Procurement Officer

## **AGENDA ITEM 9 – INFORMATION ITEMS**

### **d) City of Williston Power Purchase Agreement**

**Executive Committee  
August 20, 2020**



# **EC 9d**

## **City of Williston Power Purchase Agreement**

Executive Committee  
August 11, 2020

# **Williston Announces Invitation to Negotiate**

## *Seeking Full-Requirements Power Supply for 5 to 7 Years*

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- Williston ranked FMPA #1 out of three bidders
- Williston summer peak demand about 7-8 MW
  - Reduces ARP reserve margin by ~.8%, from 17% to 16.2% on average
- Proposed contract term January 2021 through December 2025
  - Two annual renewal options at Williston's discretion (2026, 2027)
  - Additional annual renewal by mutual agreement (2028)

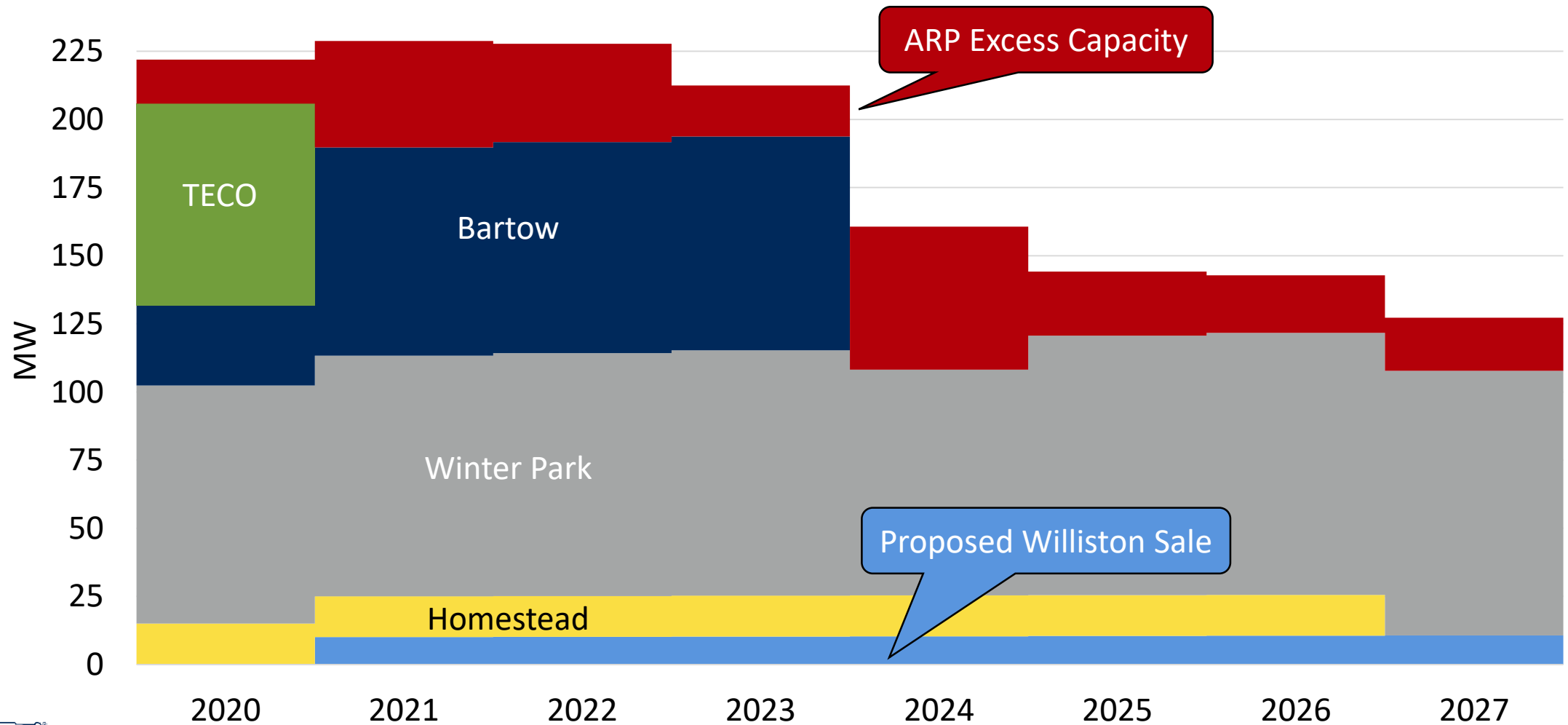
# Wholesale Sales Lower the ARP Rate

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- Capacity charges would provide return to ARP fixed costs
  - Approximately \$.04/MWh average ARP rate reduction
  - In line with other sales when accounting for size
- Energy charges would be indexed to natural gas
  - Fixed heat rate
  - Flat variable operations & maintenance charge

# Williston Sale is One Piece of the Overall Strategy

## *Ongoing Efforts to Market Remaining Excess Capacity and Energy*



# Information Only

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- Williston City Council scheduled to approve September 8<sup>th</sup>
- Action to be requested at September EC meeting

**AGREEMENT FOR THE  
PURCHASE AND SALE OF ELECTRIC ENERGY AND CAPACITY  
BETWEEN  
THE CITY OF WILLISTON  
AND  
FLORIDA MUNICIPAL POWER AGENCY  
(ALL-REQUIREMENTS POWER SUPPLY PROJECT)**

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**AGREEMENT FOR  
PURCHASE AND SALE OF ENERGY AND CAPACITY**

This AGREEMENT FOR PURCHASE AND SALE OF ELECTRIC ENERGY AND CAPACITY (this "Agreement") is entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 2020, by and between THE CITY OF WILLISTON, a municipal corporation in the State of Florida, duly constituted under Florida law ("Williston"), and FLORIDA MUNICIPAL POWER AGENCY, a governmental legal entity created and existing pursuant to Florida law ("FMPA"). Williston and FMPA are referred to also in this Agreement individually as a "Party," or collectively as the "Parties."

WHEREAS, FMPA was created pursuant to the Florida Interlocal Cooperation Act of 1969, § 163.01, Fla. Stat. (the "Interlocal Act"), and the Joint Power Act, Ch. 361, part II, Fla. Stat. (the "Joint Power Act"), and exercises power and authority granted to it under both or either provision pursuant to its enumerated powers set forth in the Interlocal Agreement Creating the Florida Municipal Power Agency, as amended and supplemented to the date of this Agreement and as may be amended and supplemented afterwards (the "Interlocal Agreement," and collectively with the Interlocal Act and the Joint Power Act, the "Act") to, among other things, provide a means for Florida municipalities and other entities which are members of FMPA to cooperate with each other on a basis of mutual advantage to provide for the present and projected electric energy needs of such municipal corporations and other entities;

WHEREAS, FMPA is authorized and empowered, among other things, (1) to plan, finance, acquire, construct, reconstruct, own, lease, operate, maintain, repair, improve, extend, or otherwise participate jointly in one or more electric projects; (2) to make and execute contracts and other instruments necessary or convenient in the exercise of the powers and functions of FMPA under Florida law; (3) to issue bonds, notes, and other evidences of indebtedness to pay all or part of the costs of acquiring or participating in such electric projects; (4) to exercise all other powers which may be necessary and proper to further the purposes of FMPA which have been or may be granted to FMPA under the laws of the State of Florida; and (5) to market and dispose of its surplus capacity and energy for the economic benefit of the All-Requirements Power Supply Project;

WHEREAS, In order to secure an adequate, reliable, and economical supply of electric capacity and energy to supply, with certain exceptions, all of the needs for electric capacity and energy of the Project Participants contracting with FMPA, FMPA established the "All-Requirements Power Supply Project," which constitutes an "electric project" and a "project" as defined in the Interlocal Act and the Joint Power Act, respectively, and created the system to carry out the All-Requirements Power Supply Project. FMPA has implemented the All-Requirements Power Supply Project by acquiring electric capacity and energy and providing for dispatch, transmission, and other services included or to be included in the system for sale and delivery to Project Participants contracting with FMPA through whatever means it deems advisable, including, without limitation, the purchase of capacity and energy and dispatching, transmission, and other services, and the ownership or leasing of

generation, dispatching, and transmission facilities or any interest therein or output or services from such generation, dispatching, and transmission facilities;

WHEREAS, The actions taken and to be taken by FMPA to implement the All-Requirements Power Supply Project have been authorized by the Interlocal Act, the Joint Power Act and the Interlocal Agreement, which Interlocal Agreement, the All-Requirements Contract, and this Agreement each constitute an "agreement to implement a project" and a "joint power agreement," as such terms are used in the Joint Power Act;

WHEREAS, Williston is seeking wholesale power supplies to serve its customers and to that end has issued an invitation to negotiate for the provision by third parties of such power supplies;

WHEREAS, FMPA wishes to supply Wholesale Electric Service, as defined below, to Williston, and Williston desires to acquire such power supplies from FMPA, on the terms and conditions set forth herein;

WHEREAS, Williston is a member of FMPA, and the capacity and energy that FMPA is selling and delivering to Williston pursuant to the terms of this Agreement is surplus to the needs of the All-Requirements Power Supply Project;

NOW, THEREFORE, for and in consideration of the foregoing, the covenants herein contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

## **ARTICLE 1 DEFINITIONS**

Capitalized terms used in this Agreement shall have the meanings set forth in this Article 1 unless the context clearly requires otherwise.

“Ancillary Services” shall mean interconnected operations services identified by the Federal Energy Regulatory Commission or other regulatory bodies or agreements as necessary to effect a transfer of capacity and energy from the Delivery Point(s) to the Metering Point(s).

“Applicable Law” shall have the meaning set forth in Section 18.10.

“Billing Meter” shall have the meaning set forth in Section 6.1.

“Capacity Charge” shall have the meaning set forth in Appendix A.

“Change in Law Costs” shall have the meaning set forth in Section 18.10.

“Charges” shall mean the Capacity Charge, Non-Fuel Energy Charge, and Fuel Energy Charge set forth in Appendix A.

“Claims” shall mean all third party claims or actions, threatened or filed and, whether groundless, false, fraudulent or otherwise, that directly or indirectly relate to the subject matter of an indemnity under this Agreement, and the resulting losses, damages, expenses, third party attorneys’

fees and court costs, whether incurred by settlement or otherwise, and whether such claims or actions are threatened or filed prior to or after the termination of this Agreement.

“DEF” means Duke Energy Florida, LLC.

“DEF Transmission Agreement” means a transmission agreement executed by and between Williston and DEF for the transmission of Wholesale Electric Service from the Delivery Point(s) to the Metering Point(s).

“Delivery Point(s)” shall mean the DEF transmission system.

“Due Date” shall have the meaning set forth in Section 5.1(c).

“Electronic Tag” or “e-Tag” means the electronic software mechanism used to schedule a physical Interchange Transaction and the parties to such transaction.

“Event of Default” shall have the meaning, with respect to FMPA set forth in Section 13.1, and with respect to Williston set forth in Section 13.2, of this Agreement.

“Firm Load” shall mean the load of FMPA’s All-Requirements Power Supply Project participants, and other wholesale customers, to whom FMPA has a contractual obligation to sell and deliver firm wholesale capacity and energy.

“Florida PSC” or “PSC” shall mean the Florida Public Service Commission.

“Interchange Transaction” means an agreement to transfer energy from a seller to a buyer that crosses one or more Balancing Authority Area boundaries.

“Interest Rate” shall have the meaning set forth in Section 5.1(c).

“kWh” shall mean kilowatt-hour.

“Letter of Credit” shall mean one or more irrevocable, transferable standby letters of credit issued by a U.S. commercial bank or a foreign bank with a U. S. branch with such bank having a credit rating of at least A- from S&P or A3 from Moody’s, in a form reasonably acceptable to the Party in whose favor the letter of credit is issued, the costs of which shall be borne by the applicant therefor.

“Loss Schedule” shall have the meaning set forth in Section 9.2(b).

“Losses” shall mean transmission line and/or transformer losses on the DEF transmission system for Wholesale Electric Service between the Delivery Point(s) and the Metering Point(s), as determined in accordance with DEF’s Open Access Transmission Tariff.

“Metering Point(s)” shall mean the points of interconnection between the DEF transmission system and the low side of the Williston substation transformers.

“Non-Fuel Energy Charge” shall have the meaning set forth in Appendix A.

“OATT” shall mean Open Access Transmission Tariff.

“Party” and “Parties” shall have the meaning set forth in the first paragraph.

“Prudent Utility Practice” shall mean any of the applicable practices, methods and acts (i) required by the rules, regulations, policies and standards of state regulatory authorities having jurisdiction in relation to operations or otherwise required by Applicable Law; or (ii) otherwise engaged in or approved by a significant portion of the electric utility industry during the relevant time period; which in each case in the exercise of reasonable judgment in light of the facts known or that should have been known at the time a decision was made, could have been expected to accomplish the desired result in a manner consistent with law, regulation, safety, environmental protection, economy, and expedition. Prudent Utility Practice is intended to be acceptable practices, methods or acts generally accepted and lawful in the region, and is not intended to be limited to the optimum practices, methods or acts to the exclusion of all others.

“Requesting Party” shall have the meaning set forth in Section 16.2.

“Term” shall have the meaning set forth in Article 3.

“Wholesale Electric Service” shall have the meaning set forth in Section 2.1.

## **ARTICLE 2 WHOLESALE ELECTRIC SERVICE**

### **Section 2.1    Wholesale Electric Service.**

Commencing on the Service Date and during the Term, in accordance with the terms and subject to the conditions hereof, FMPA shall provide and deliver and Williston shall purchase and receive capacity and energy required to serve all of Williston’s retail electric load plus Losses and applicable Ancillary Services, which services shall be referred to cumulatively as “Wholesale Electric Service”.

### **Section 2.2    Exclusivity of Supply.**

(a) During the Term, Williston shall not purchase or install electric capacity or energy, or energy storage, to serve any of its retail load requirements from any entity other than FMPA without the prior written consent of FMPA unless FMPA fails to furnish capacity or energy to Williston pursuant to the terms of this Agreement, except that this Section 2.2 is not intended, nor is it to be construed, to prohibit the interconnection and net metering of customer-owned renewable generation resources that are located on such customer's premises (*i.e.*, the load side of the customer meter) and sized primarily to offset part or all of the retail customer's electric requirements with renewable energy.

(b) Nothing in this Agreement shall prohibit any Williston customer from owning or operating back-up generating resources on the customer side of the retail meter, provided that the output of such back-up resources is used by the customer to serve their on-site load and is not used to deliver and sell energy to the Williston electric system.

## **ARTICLE 3 TERM**

### **Section 3.1. Effective Date.**

Subject to the conditions precedent outlined in Article 10, this Agreement shall be in force and effect on the date indicated in the introductory paragraph of this Agreement (the “Effective Date”).

### **Section 3.2. Service Date.**

The obligations of the Parties in respect to the supply, delivery, purchase and receipt of Wholesale Electric Service shall commence on January 1, 2021 at 12:00 a.m. E.S.T (the “Service Date”)

### **Section 3.3. Term.**

This Agreement shall remain in effect through December 31, 2025 at 11:59 p.m. E.S.T. (the “Term”), unless terminated earlier under the terms of this Agreement. The Term may be extended as follows:

- a) Williston may extend the Term of this Agreement through December 31, 2026 at 11:59 p.m. E.S.T. by providing FMPA written notice no less than twelve months (12) prior to December 1, 2025.
- b) Williston may extend the Term of this Agreement through December 31, 2027 at 11:59 p.m. E.S.T. by providing FMPA written notice no less than twelve months (12) prior to December 1, 2026.
- c) The Term can be extended one additional year through December 31, 2028 upon mutual agreement of the Parties by providing FMPA written notice no less than twelve months (12) prior to December 1, 2027.

Termination or expiration of this Agreement shall not affect or excuse the performance of either Party under any provision of this Agreement that by its nature or terms survives any such termination or expiration.

## **ARTICLE 4 SALE AND PURCHASE**

### **Section 4.1 Sale and Purchase**

(a) FMPA shall, at its cost and expense, sell and deliver Wholesale Electric Service to the Delivery Point(s) and Williston shall purchase and receive Wholesale Electric Service at the Delivery Point(s) during the Term. The Charges for such sale and purchase shall be as set forth in Section 5.1.

(b) FMPA is responsible for delivering Wholesale Electric Service to the Delivery Point(s).

(c) The Wholesale Electric Capacity and Wholesale Electric Energy sold and delivered by FMPA to Williston hereunder shall be three phase, 60 hertz alternating current having a nominal voltage as specified by and otherwise in accordance with interconnection protocols.

(d) Williston acknowledges and agrees that FMPA, or its agent(s), shall have the absolute authority, which FMPA or its agent(s) may exercise in their sole discretion, to manage, control, operate

and maintain the electricity resources used to supply Wholesale Electric Service to Williston under this Agreement. FMPA may serve Williston with energy from any resource(s) available to it without limitation.

(e) The sale of Wholesale Electric Service by FMPA under this Agreement does not constitute either: (1) a sale, lease, transfer, or conveyance of an ownership interest or contractual right in or to any specific generation facility or resource(s); or (2) a dedication of ownership or an entitlement to the capacity or output of any specific generation facility or resource.

(f) Williston shall reasonably cooperate with FMPA in connection with FMPA's effort to obtain historical and anticipated demand and energy data for Williston during the Term of this Agreement. Williston shall notify FMPA promptly upon becoming aware of any material change in Williston's service territory or after receipt of a written request for service from any large commercial or residential development that has a planned demand of 1 MW or greater of capacity that is reasonably expected to be completed before the end of the Term or require electric service that will materially impact Williston's electricity needs.

(g) Williston shall, at its own expense, comply with the DEF Transmission Agreement and DEF OATT which may include, without limitation, applicable power factor requirements and underfrequency load shedding requirements.

## **ARTICLE 5 PRICE AND BILLING**

### **Section 5.1 Billing and Payment.**

(a) On or before the 10th day following the last day of each month during the Term, FMPA shall provide to Williston an invoice showing the total amount due to FMPA for the preceding month, which invoice shall itemize (1) the monthly Capacity Charge; (2) the monthly Non-Fuel Energy Charge; (3) the monthly Fuel Charge; and (4) any other payment amounts for which Williston is responsible under this Agreement for the previous month. FMPA shall provide monthly invoices to Williston electronically via email.

(b) In addition to the payments set forth in Section 5.1(a) (Billing and Payment), each FMPA invoice shall include the following adjustments, as applicable:

(1) any billing corrections or adjustments, including charges or credits, or both, identified by either of the parties subsequent to the last invoice, which are not subject to interest;

(2) any billing corrections, including charges or credits, that the parties have mutually agreed upon or otherwise resolved in accordance with Section 5.4 (Billing Adjustments) subsequent to the last invoice, which are subject to interest in accordance with Section 5.4 (Billing Adjustments); and

(3) any delinquent amounts, which are subject to interest in accordance with Section 5.1(c) (Billing and Payment).

(c) Each monthly payment by Williston shall be due and payable on or before the 25<sup>th</sup> day of the month for each invoice transmitted to Williston (the "Due Date"). Williston shall make payment to FMPA in accordance with Section 5.2 (ACH Deposit). If payment in full has not been received by FMPA on or before the Due Date, then Williston shall pay interest on the amount of Williston's monthly invoice not paid, in whole or in part, by the Due Date, from the Due Date until such amount is paid in full, together with all accrued interest. Such interest shall be compounded daily at the prime interest rate plus 2.0% as published in the Wall Street Journal (the "Interest Rate").

### **Section 5.2 ACH Deposit.**

Payment shall be made by the transfer of funds from Williston's bank account, using an ACH Push or domestic Wire Transfer. No other payment methods are accepted, including cash, mailed check, or electronic check.

#### **ACH/ETF:**

Bank Name:	Wells Fargo Bank, N.A.
Routing Number:	121000248
Account Number:	4943550913

#### **Wire Transfers**

Bank Name:	Wells Fargo Bank, N.A.
Routing Number:	121000248
Account Number:	4943550913
Account Name:	FMPA All Requirements O&M

### **Section 5.3 Disputed Bills Must be Paid.**

(a) If, after receiving an invoice (or any other statement or bill pursuant to this Agreement), Williston reasonably questions or disputes the amount or propriety of any payment or amount claimed by FMPA to be due pursuant to this Agreement, Williston shall provide FMPA with written notice of such disputed invoice amount. FMPA and Williston shall cooperate in good faith to resolve any question or dispute prior to the Due Date. However, notwithstanding the notice of a disputed invoice amount, Williston shall make all payments in full in accordance with all invoices issued by FMPA. Adjustments with interest shall subsequently be made, if appropriate, as set forth in Section 5.4 (Billing Adjustments).

### **Section 5.4 Billing Adjustments.**

(a) Williston shall have twelve (12) months after the receipt of any invoice (or any other statement or bill made pursuant to this Agreement) to question or contest the amount or propriety of any charge or credit, or both, on such invoice, statement, or bill. In the event that Williston questions or disputes any such charge or credit, or both, FMPA shall, within 60 days of its receipt of any such question or dispute, review the subject charge or credit and notify Williston of the findings of its

review. Any error in the amounts reflected on such disputed invoice, statement, or bill and the amount of any adjusted payment that either party is required to make as a result of such re-determination will be identified by FMPA in writing.

(b) If, within twelve (12) months of issuance, FMPA discovers an error in any invoice issued pursuant to this Agreement, FMPA shall have the right to correct such invoice. Any invoice correction shall be in writing and shall state the specific basis for the correction. An invoice correction shall constitute a new invoice for all purposes of this Agreement.

(c) Not later than the 15th day after receipt by Williston of written notification from FMPA of a billing adjustment pursuant to this Section 5.4 (Billing Adjustments), the party required to make such payments, if any, shall make payment to the other party in immediately available funds. If a billing adjustment made pursuant to this Section 5.4 (Billing Adjustments) results in a payment by FMPA to Williston, such amount shall include interest, compounded daily, at the Interest Rate from the date payment was received by FMPA until the date such payment together with all added interest is paid.

#### **Section 5.5 Availability of Records.**

Until the end of twelve (12) months after the receipt of any invoice, each party shall, at its own expense with respect to any invoice submitted or payment requested under this Agreement for Wholesale Electric Service provided to Williston, make available to the other party and each party may audit, such books and records of the other party (or other relevant information to which such party has access) as are reasonably necessary to calculate and determine the accuracy of amounts shown on such invoice to verify the appropriateness of the invoiced amounts. Upon written request and reasonable notice, each party shall make available to the other party copies of or access to such books and records during normal business hours, at such requesting party's sole expense for purposes of conducting such an audit. In the event either party determines that an invoice was not accurate or appropriate, it shall notify the other party in writing of the alleged discrepancy and, in its opinion, the necessary correction. Within 15 days following receipt of such notice, the party receiving such notice shall make such payments or take such other actions as are necessary to correct or dispute the alleged discrepancy.

#### **Section 5.6 Taxes, Fees and Levies, Sales for Resale.**

(a) FMPA shall be obligated to pay all present and future applicable taxes, fees and levies that may be assessed upon FMPA by any governmental authority not controlling or controlled by FMPA on the sale to Williston of Wholesale Electric Service or any component thereof. FMPA shall promptly notify Williston of the commencement of any legislative, regulatory, administrative or other governmental action, of which it becomes aware, imposing such taxes, fees and/or levies upon the sale of Wholesale Electric Service. Each such tax, fee and levy shall be identified in a separate line item on the monthly invoice from FMPA to Williston for Wholesale Electric Service. Williston shall reimburse FMPA for the increase in any such taxes, fees and levies paid by FMPA as a result of providing Wholesale Electric Service to Williston under this Agreement.

(b) All Wholesale Electric Service delivered by FMPA to Williston hereunder shall be sales for resale by Williston. Williston shall not use the electric capacity and energy purchased under this Agreement to make wholesale sales or to serve wholesale customers of any type. Williston shall obtain and provide FMPA with any certificates reasonably requested by FMPA to evidence that the deliveries hereunder are sales for resale.

## **ARTICLE 6**

### **SERVICE FACILITIES AND METERING**

#### **Section 6.1     Metering Points**

The Wholesale Electric Service and (if applicable) Ancillary Services shall be measured by primary and back-up metering equipment at or adjacent to the Metering Point(s) ("Billing Meters"), which metering equipment shall constitute the basis of measuring demand and energy and the computation of bills for demand charges and energy consumption charges. Williston has arranged for Billing Meters to be installed by DEF pursuant to the terms of the DEF Transmission Agreement. In the event that DEF removes such meters, Williston shall, at its sole expense, furnish and install the Billing Meters, or arrange for them to be furnished and installed.

#### **Section 6.2     Witness Rights**

The Parties intend, subject to the extent of their rights under agreements with third-party meter owners, that each Party shall have the right in the presence of a representative of the Billing Meter owner and the other Party, to read and check the Billing Meters and associated metering equipment, for any reason, including when there is any dispute or disagreement as to the correctness of the readings or the accuracy of the Billing Meters or metering equipment. In the event of such dispute or disagreement, the Parties shall, subject to the applicable rights and obligations of Williston under the DEF Transmission Agreement, within five (5) business days of notice of such dispute, retain a mutually agreeable independent inspector to test the Billing Meters and metering equipment per industry standards. The fees, costs and expenses of such test and inspection shall be borne equally by the Parties. The determination of the independent inspector as to the correctness of the reading of the Billing Meter and adjustments, if any, that are required to be made thereto, shall be rendered within thirty (30) days of referral of the dispute or disagreement, shall be in writing and shall be accepted by the Parties as final. The Parties agree that the Billing Meters and metering equipment will be considered accurate for purposes of billing and invoicing hereunder provided calibration is within the meter accuracy threshold set forth in the DEF Transmission Agreement as of the date of this Agreement, or as the DEF Transmission Agreement may be amended from time to time, fast or slow, of accuracy. Should any meter be beyond this range of accuracy, an adjustment shall be made pursuant to Section 6.6

#### **Section 6.3     Ownership and Maintenance of Meters**

Billing Meters owned by Williston shall be maintained in accordance with Prudent Utility Practice and the terms of the DEF Transmission Agreement, which may be amended from time to time. Williston will use reasonable commercial efforts under the DEF Transmission Agreement to

cause Billing Meters owned by DEF to be maintained in accordance with Prudent Utility Practice and the terms of such agreement.

#### **Section 6.4     Meter Testing**

Billing Meters used to measure the delivery of the Wholesale Electric Service hereunder will be tested and maintained in accordance with the applicable terms and conditions of the DEF Transmission Agreement. Williston shall, to the extent of its rights under the DEF Transmission Agreement, extend to FMPA the rights of Williston to observe meter testing and inspection.

#### **Section 6.5     Check Meters**

If no DEF meters are available for use as back-up Billing Meters, Williston shall have the right to install at its own expense, check metering devices (“Williston’s Check Metering”) which installation shall be reasonably acceptable to FMPA and shall be maintained consistent with Prudent Utility Practice. FMPA, at its own expense, shall have the right to inspect and test Williston’s Check Metering upon installation and at least annually thereafter. FMPA shall provide Williston with reasonable advance notice of, and permit a representative of Williston to witness and verify, such inspections and tests, provided that Williston shall not unreasonably interfere with or disrupt the inspection and testing activities of FMPA and FMPA shall comply with all of Williston’s safety standards.

#### **Section 6.6     Accuracy of Meters; Billing Adjustments**

If a Billing Meter fails to register, or if the measurement made by a Billing Meter is found upon testing to be inaccurate by more than the meter accuracy threshold set forth in the DEF Transmission Agreement, as the DEF Transmission Agreement may be amended from time to time, an adjustment shall be made correcting all measurements by the inaccurate or defective Billing Meter, for both the amount of the inaccuracy and the period of the inaccuracy, in the following manner:

(a) In the event that the primary Billing Meter is found to be defective or inaccurate, the Parties shall use the back-up Billing Meter or Williston’s Check Metering, if installed, to determine the amount of such inaccuracy, provided that Williston’s Check Metering has been tested and maintained in accordance with the provisions of Section 6.4. In the event that the Billing Meter, the back-up Billing Meter and the Williston Check Meters fail, the Parties shall estimate the amount of the necessary adjustment during periods of similar operating conditions when the Billing Meter was registering accurately. The adjustment shall be made for the period during which inaccurate measurements were made.

(b) In the event that the Parties cannot agree on the actual period during which the inaccurate measurements were made, the period during which the measurements are to be adjusted shall be the shorter of (i) the last one-half of the period from the last previous test of the Billing Meter to the test that found the Billing Meter to be defective or inaccurate, or (ii) the ninety (90) days immediately preceding the test that found the Billing Meter to be defective or inaccurate.

(c) To the extent that the adjustment period covers a period of deliveries for which billings have already been made by FMPA, FMPA shall use the corrected measurements as determined in

accordance with this Article 6 to compute the adjustment necessary for the period of the inaccuracy and shall adjust billing for this period from such recomputed amount in the next monthly bill after the error is identified, and to the extent that FMPA has overbilled Williston for the Wholesale Electric Service hereunder, accrued interest on the amount of any overpayments by Williston shall be computed at the Interest Rate from the date FMPA received such overpayment by Williston until refunded or (if requested by Williston, credited) against future payment.

**Section 6.7     Data Acquisition Equipment.**

(a) Real time data acquisition equipment required for FMPA to provide service to Williston pursuant to the terms and conditions of this Agreement shall be determined by DEF and FMPA, in their sole discretion, as deemed reasonably necessary for reliability, security, economics, and necessary or desirable monitoring of system operations. Telemetry and data requirements include real and reactive loads at the Metering Point(s). Williston shall be responsible for all costs of any additional equipment and communications circuits deemed necessary.

(b) All data acquisition equipment, wires, and other electrical equipment or systems furnished or installed by DEF or Williston pursuant to this Agreement will remain the property of DEF or Williston, respectively. Williston agrees that FMPA shall have no liability whatsoever for data acquisition equipment, wires, and other electrical equipment or systems owned by Williston or DEF.

**ARTICLE 7  
CONTINUITY OF SERVICE**

**Section 7.1.     Interruptions.**

FMPA shall supply and deliver Wholesale Electric Service hereunder to the Delivery Point(s) on a firm basis equal to FMPA's Firm Load. FMPA shall not be responsible for any failure to deliver Wholesale Electric Service due to (a) transmission system operations beyond the Delivery Point(s) or (b) interruptions of transmission service necessary to deliver Wholesale Electric Service to Williston if initiated by the Florida Reliability Coordinating Council security coordinator. FMPA disclaims any liability for third-party claims arising out of any failure to supply Wholesale Electric Service hereunder, or for interruption, reversal or abnormal voltage of the supply.

**Section 7.2.     Capacity Shortfalls.**

During the Term, in the event of a capacity shortfall that requires load interruption, FMPA shall take such action as set forth in Section 9.4(b) showing no adverse distinction between Williston and FMPA Firm Load.

**Section 7.3.     Shortfall Notification.**

FMPA will promptly inform Williston as soon as possible under the circumstances upon becoming aware of any event, occurrence or circumstance that will result in load shedding or otherwise cause a material reduction or an interruption or suspension of delivery of the Wholesale Electric Service to Williston.

## **ARTICLE 8 DELIVERY VOLTAGE**

### **Section 8.1    Delivery Voltage**

The delivery voltage at each Delivery Point(s) shall be as agreed between DEF and FMPA. FMPA and Williston shall maintain close coordination with respect to future delivery points in the interests of system reliability. Each party shall endeavor, to the extent practicable, to keep the other party advised of significant developments related to their respective power supply facilities.

## **ARTICLE 9 DELIVERY, LOSSES, AND SCHEDULING**

### **Section 9.1.    Delivery.**

Wholesale Electric Service shall be delivered by FMPA to Williston at the Delivery Point(s). Title to and risk of loss related to the Wholesale Electric Service shall transfer from FMPA to Williston at the Delivery Point(s) free and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto by any person arising prior to the Delivery Point(s). FMPA shall not incur any expense or risk beyond the Delivery Point(s) and Williston shall not incur any expenses or risk up to and at the Delivery Point(s). Williston shall be responsible for all costs associated with delivery of Wholesale Electric Service from the Delivery Point(s) to Williston's electric distribution system, which costs may include, without limitation, transmission studies, upgrades to the DEF transmission system, or any other costs pursuant to the DEF OATT.

### **Section 9.2.    Losses.**

a)        Losses for Wholesale Electric Service between the Delivery Point(s) and the Metering Point(s) for Williston's electric distribution system shall be determined in accordance with DEF's approved transmission tariff. FMPA will provide capacity and energy for Losses on the DEF transmission system associated with the delivery of the Wholesale Electric Service between the Delivery Point(s) and the Metering Points on the Williston system, as further detailed in Appendix A.

(b)        Losses will be paid back to DEF in-kind via an interchange schedule, and such schedule will be subject to energy imbalance service provided to Williston (Schedule 4) under the DEF OATT.

### **Section 9.3    Scheduling.**

FMPA, or its agent, will schedule the Wholesale Electric Service for delivery to the Metering Point(s) every hour during the Term using an Electronic Tag, and such schedule will be subject to energy imbalance service (Schedule 4) under the DEF OATT.

### **Section 9.4    Constancy of Service; Load Shedding; BA Operator Instructions.**

(a)        FMPA shall provide Wholesale Electric Service with a priority and firmness equal to FMPA Firm Load.

(b) Notwithstanding any other provision of this Agreement, during the Term, in the event that FMPA, or one of its agents, determines in its sole discretion that it is necessary or appropriate for FMPA or the FMPA's control area to shed, interrupt, or curtail Firm Load due to an emergency situation (including for reason that adequate resources are not available), and FMPA or the control area operator does shed, interrupt or curtail such loads, then Williston's similar firm loads or interruptible/curtailable loads shall share, on a pro rata basis among Williston and FMPA's Firm Load, in such interruption, curtailment or load shedding. Thereafter, Williston may restore service to such shed, interrupted or curtailed loads consistent with the restoration of service to FMPA's and the control area similar firm or interruptible/curtailable loads. For actions taken pursuant to this Section 9.4(b), neither FMPA, nor its agents shall be in breach of this Agreement by reason of, and shall have no liability whatsoever to Williston, and FMPA hereby expressly disclaims all third party liability for, any failure to make capacity available under this Agreement, or for any failure to deliver or any interruption in the delivery of energy under this Agreement or for any deficiency in the quality of service under this Agreement unless such failure is the sole result of the gross negligence or willful misconduct of FMPA.

(c) Williston shall follow Balancing Authority operator instructions regarding load shedding. If Williston does not follow the instructions of the system operations agent, and Williston's inaction results in FMPA having to purchase emergency or other energy, or results in any imbalance, unreserved use or other penalties to either FMPA or Williston, or any other penalties or costs, FMPA shall not be responsible for any such costs incurred by FMPA or Williston, or both. Such costs invoiced to and paid by FMPA, if any, will be incorporated into a subsequent monthly invoice as needed to reimburse FMPA for any such costs invoiced to and paid by FMPA.

#### **Section 9.5 Balancing Authority Area**

During the Term, unless otherwise agreed to by the Parties, Williston's electric load shall remain in the DEF Balancing Authority Area.

#### **Section 9.6 Ancillary Services**

Williston shall secure and be liable for transmission service on DEF's transmission system, and any required Ancillary Services (at a minimum Schedule 1 (Scheduling, System Control & Dispatch Service), Schedule 2 (Reactive Supply and Voltage Control Service), and Schedule 4 (Imbalance Service), necessary to accept the Wholesale Electric Service.

### **ARTICLE 10 CONDITIONS PRECEDENT**

#### **Section 10.1. Conditions to Obligations of Williston.**

The obligations of Williston under this Agreement to purchase and receive Wholesale Electric Service shall commence on the Service Date, and such obligations are subject to the fulfillment and satisfaction of each of the following conditions on or before December 31, 2020, any one of more of which may be waived only in writing, in whole or in part, by Williston:

(a) Representations, Warranties and Covenants True at the Effective Date.

(i) All representations and warranties of FMPA contained in this Agreement shall be true and correct in all material respects as of the date when made and at and as of the Effective Date as though such representations and warranties had been made or given on such date (except to the extent such representations and warranties specifically pertain to an earlier date), except (A) for changes contemplated by this Agreement and (B) where the failure to be true and correct will not have a material adverse effect on Williston's rights, remedies or benefits under this Agreement; and (ii) FMPA shall have performed and complied with, in all material respects, its obligations that are to be performed or complied with by it hereunder prior to or on the Effective Date.

(b) No Material Adverse Change. No change in the business, properties, assets, generating resources, transmission system, financial condition, results of operations or prospects of FMPA shall have occurred and be continuing or with the passage of time, the giving of notice or both, shall be reasonably likely to occur which have a material adverse effect on FMPA's ability to perform its obligations under this Agreement.

(c) Absence of Litigation. No claims, actions, suits, investigations, grievances, arbitrations or proceedings shall be pending or threatened against Williston or FMPA with respect to the transactions contemplated hereunder or the adverse outcome of which would have a material adverse effect on the ability of Williston or FMPA to perform its respective obligations under this Agreement.

(d) Required Approvals. This Agreement shall have been approved by the FMPA Executive Committee and the Williston City Council.

(e) PSC Regulation. No new law shall be pending or passed which would cause FMPA to become regulated by the Florida PSC by virtue of its service duties under this Agreement or increase the cost to FMPA of providing Wholesale Electric Service to Williston.

(f) Transmission Service. Williston has obtained transmission service from DEF necessary to deliver Wholesale Electric Service from the Delivery Point(s) to Williston's electric system.

(g) Each Party shall notify the other Party promptly if any information comes to its attention prior to the Effective Date or prior to the Service Date, as applicable that it believes will potentially excuse such Party from the performance of its obligations under this Agreement or might reasonably cause any condition set forth in this Article 10 not to be satisfied on or prior to the Service Date.

**Section 10.2. Conditions to Obligations of FMPA.**

The obligations of FMPA under this Agreement to sell and deliver Wholesale Electric Service shall commence on the Service Date, and such obligations are subject to the fulfillment and satisfactions, on or before the dates indicated, of each of the following conditions, any one or more of which may be waived only in writing, in whole or in part, by FMPA:

(a) Representations, Warranties and Covenants True at the Effective Date. (i) All representations and warranties of Williston contained in this Agreement shall be true and correct in all

material respects when made and at and as of the Effective Date and at and as of the Service Date as though such representations and warranties had been made or given on such date (except to the extent such representations and warranties specifically pertain to an earlier date), except (A) for changes contemplated by this Agreement and (B) where the failure to be true and correct will not have a material adverse effect on FMPA's rights, remedies or benefits under this Agreement; and (ii) Williston shall have performed and complied with, in all material respects, its obligations that are to be performed or complied with by it hereunder prior to or on the Effective Date.

(b) Required Approvals. This Agreement shall have been approved by the FMPA Executive Committee and the Williston City Council.

(c) No Material Adverse Change. No material adverse change in Williston's electric facilities, electric business, financial condition, results of operations or prospects of Williston shall have occurred and be continuing, or with the passage of time, the giving of notice or both, shall be reasonably likely to occur as of the Service Date.

(d) Absence of Litigation/Legislative Action. No claims, actions, suits, grievances, investigations, arbitrations or proceedings shall be pending or threatened against Williston or FMPA with respect to this Agreement which might have a material adverse effect on the ability of Williston or FMPA to perform its respective obligations under this Agreement.

(e) PSC Regulation. No new law shall be pending or passed which would cause FMPA to become regulated by the Florida PSC by virtue of its service duties under this Agreement or increase the cost to FMPA of providing Wholesale Electric Service to Williston.

(f) Transmission Service. Williston has obtained transmission service from DEF necessary to deliver Wholesale Electric Service from the Delivery Point(s) to Williston's electric system.

(g) Documentation. Williston has provided FMPA with sufficient documentation for the determination of its payment obligation priorities to ensure that costs incurred pursuant to this Agreement are not secondary to costs other than those associated with the operation and maintenance of its electric system.

(h) Each Party shall notify the other Party promptly if any information comes to its attention prior to the Effective Date or prior to the Service Date, as applicable that it believes will potentially excuse such Party from the performance of its obligations under this Agreement or might reasonably cause any condition set forth in this Article 10 not to be satisfied on or prior to the Service Date.

## **ARTICLE 11 REPRESENTATIONS AND WARRANTIES**

### **Section 11.1. General Representation and Warranties.**

Each Party hereby represents and warrants to the other that:

(a) It is duly organized, validly existing and in good standing under the laws of its jurisdiction of organization and is duly qualified to do business in all jurisdictions where such qualification is required.

(b) Williston's payment obligations under this Agreement are costs designated as an operation and maintenance expense of its electric system during the Term of this Agreement, ensuring sufficient funds will be allocated to the meet all payment obligations resulting from the purchase of capacity and energy from FMPA.

(c) It has or will have prior to the Effective Date full power and authority to enter this Agreement and perform its obligations hereunder. The execution, delivery and performance of the Agreement have been duly authorized by all necessary municipal and other action and do not and will not contravene its organization documents or conflict with, result in a breach of, or entitle any party (with due notice or lapse of time or both) to terminate, accelerate or declare a default under, any agreement or instrument to which it is a party or by which it is bound.

(d) The execution, delivery and performance by it of this Agreement will not result in any violation by it of any law, rule or regulation applicable to it. It is not a party to, nor subject to or bound by, any judgment, injunction or decree of any court or other governmental entity which may restrict or interfere with the performance of this Agreement by it or may materially and adversely affect the business, property, financial condition, results of operations or prospects of such Party.

(e) This Agreement is a valid and binding obligation, enforceable against it in accordance with its terms, except as (i) such enforcement may be subject to bankruptcy, insolvency, reorganization, moratorium or other similar laws now or hereafter in effect relating to creditors' rights generally and (ii) the remedy of specific performance and injunctive relief may be subject to equitable defenses and to the discretion of the court before which any proceeding therefor may be brought.

(f) Except for approvals by the FMPA Executive Committee and the Williston City Council, no consent, waiver, order, approval, authorization or order of, or registration, qualification of filing with, any court or other governmental agency or authority or other person is required for the execution, delivery and performance by such Party of this Agreement and the consummation by such Party of the transactions contemplated hereby. No consent or waiver of any party to any contract to which such Party is a party or by which it is bound is required for the execution, delivery and performance such Party of this Agreement that has not been or will by the Effective Date have been duly obtained.

(g) There is no action, suit, grievance, arbitration or proceeding pending or, to the knowledge of such Party, threatened against or affecting such Party at law or in equity, before any federal, state, municipal or other governmental court, department, commission, board, arbitrator, bureau, agency or instrumentality which prohibits or impairs its ability to execute and deliver this Agreement or to consummate any of the transactions contemplated hereby. Such Party has not received written notice of and otherwise is not aware of any such pending or threatened investigation, inquiry or review by any governmental entity.

## **Section 11.2. Disclaimers.**

**EXCEPT AS EXPRESSLY SET FORTH HEREIN, EACH PARTY EXPRESSLY DISCLAIMS ANY REPRESENTATION OR WARRANTY, WRITTEN OR ORAL, STATUTORY, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY REPRESENTATIONS OR WARRANTIES WITH RESPECT TO MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE WITH RESPECT TO THE PROVISION OR RECEIPT OF WHOLESALE ELECTRIC SERVICE HEREUNDER, ALL OF WHICH ARE HEREBY EXPRESSLY EXCLUDED AND DISCLAIMED.**

**ARTICLE 12  
RESERVED**

**ARTICLE 13  
EVENTS OF DEFAULT**

**Section 13.1. Events of Default by FMPA.**

Any one or more of the following shall constitute an “Event of Default” hereunder with respect to FMPA:

(a) FMPA shall fail to pay any amounts to be paid by FMPA hereunder to Williston and such failure shall continue for a period of more than ten (10) days after notice by Williston.

(b) A default shall occur in the performance of any other material covenant or condition to be performed by FMPA hereunder (other than a default specified in Section 13.1(a), which shall be subject the ten (10) day cure period specified therein) and such default shall continue unremedied for a period of thirty (30) days after notice from Williston specifying the nature of such default; provided, however, that if such default (other than the failure to make payments when due) cannot reasonably be remedied by FMPA within thirty (30) days, subject to commencement of action to remedy the default within such thirty (30) day period, FMPA shall have up to an additional ninety (90) days to remedy the default.

(c) A custodian, receiver, liquidator or trustee of FMPA or of all or substantially all of the property of either, is appointed or takes possession and such appointment or possession remains uncontested or in effect for more than sixty (60) days; or FMPA makes an assignment for the benefit of its creditors or admits in writing its inability to pay its debts as they mature; or FMPA is adjudicated bankrupt or insolvent; or an order for relief is entered under the Federal Bankruptcy Code against FMPA; or all or substantially all of the material property of either is sequestered by court order and the order remains in effect for more than sixty (60) days; or a petition is filed against FMPA under any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation law of any jurisdiction, whether now or subsequently in effect, and is not stayed or dismissed within sixty (60) days after filing.

(d) FMPA files a petition in voluntary bankruptcy or seeks relief under any provision of any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation law of any jurisdiction, whether now or subsequently in effect; or consents to the filing of any petition against it under any such law; or consents to the appointment of or taking possession by a custodian, receiver, trustee or liquidator of FMPA or all or substantially all of the property of either.

### **Section 13.2. Events of Default by Williston.**

Any one or more of the following shall constitute an “Event of Default” hereunder with respect to Williston:

(a) Williston shall fail to pay any amounts to be paid by Williston hereunder to FMPA and such failure shall continue for a period of more than ten (10) days after notice by FMPA.

(b) Default shall occur in the performance of any material covenant or condition to be performed by Williston hereunder (other than a default specified in Section 13.2(a), which shall be subject to the ten (10) day cure period specified therein) and such default shall continue unremedied for a period of thirty (30) days after notice from FMPA specifying the nature of such default; provided, however, that if such default cannot reasonably be remedied by Williston within thirty (30) days, subject to commencement of action to remedy the default within such thirty (30) day period, Williston shall have up to additional ninety (90) days to remedy the default.

### **Section 13.3. Remedies.**

The Parties shall have the following remedies available to them with respect to the occurrence of an Event of Default with respect to the other Party hereunder:

(a) Upon the occurrence of an Event of Default by either Party hereunder, the non-defaulting Party shall have the right to (i) invoice and collect all amounts then due to it from the defaulting Party hereunder (subject to any applicable limitation of liability or cap on damages), and (ii) terminate this Agreement at any time during the continuation of such Event of Default upon written notice to the defaulting Party. Notwithstanding any other provision of this Agreement, after the occurrence of an Event of Default and for so long as the Event of Default is continuing and has not been cured, the non-defaulting Party shall have the right, upon written notice to the defaulting Party, to suspend all performance under this Agreement until such Event of Default has been cured. In addition, if FMPA is the defaulting Party, then Williston shall have the right in addition to its other rights and remedies, but not the obligations, during the continuation of such default and prior to any termination of this Agreement, to purchase energy and capacity, in a commercially reasonable manner considering the circumstances of such default, from third parties and have such delivered to the Delivery Point(s) in quantities sufficient to cover any shortfall in Wholesale Electric Service resulting from such default, and FMPA shall reimburse Williston for all costs, including both out-of-pocket and internal costs, incurred by Williston related to such third-party purchase in excess of the cost that Williston would otherwise have incurred for Wholesale Electric Service hereunder. The foregoing sentence shall not prevent Williston from seeking and recovering monetary damages against FMPA in the event Williston terminates this Agreement due to FMPA’s breach of this Agreement, including without limitation, similar damages as specified above. If Williston is the defaulting Party and, by

reason of Williston's default, FMPA is not receiving all or a portion of the payments in accordance with the terms hereof, then FMPA shall have the right, but not the obligation, during the continuation of such default and prior to any termination of this Agreement to discontinue Wholesale Electric Service to Williston upon five (5) days prior notice of such intent.

(b) In addition to the remedies set forth in Section 13.3(a), either Party may pursue against the other Party any legal rights and remedies made available under Florida Law.

## **ARTICLE 14 LIMITATION OF LIABILITY**

### **Section 14.1. No Consequential Damages.**

NOTWITHSTANDING ANYTHING IN THE AGREEMENT TO THE CONTRARY, NO PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER INDEMNITY PROVISIONS OR OTHERWISE, INCLUDING WITHOUT LIMITATION, LOST PROFITS, LOST REVENUES, COST OF CAPITAL; LOSS OF USE, LOSS OF GOODWILL, REPLACEMENT POWER OR CLAIMS OF CUSTOMERS, UNLESS SUCH DAMAGES ARE A COMPONENT OR ELEMENT OF A CLAIM THAT IS SUBJECT TO INDEMNIFICATION HEREUNDER AND COVERED UNDER A PRIMARY POLICY OF LIABILITY INSURANCE, IF ANY ISSUED BY A THIRD PARTY SURETY.

## **ARTICLE 15 INDEMNIFICATION**

### **Section 15.1. Indemnification by FMPA.**

To the extent permitted by Florida law and subject to the limitations set out in Article 14, and subject to and as limited by the waiver of sovereign immunity recovery limits provided for in section 768.28(5), Florida Statutes regardless of the type or basis of the claim, FMPA shall indemnify, defend and hold harmless Williston and its respective officials, officers, directors, agents, representatives and employees from and against any and all loss, costs, expense, claims, demands, liabilities (including reasonable attorneys' fees), judgments, fines, settlements and other amounts arising from any and all Claims relating to or arising out of:

- (a) any willful misconduct or illegal acts of FMPA;
- (b) any damages awarded against Williston in a Claim by a third party to the extent arising from the negligence acts or omissions of FMPA or any of its agents or employees in exercising its rights or performing its obligations hereunder after the Effective Date.

### **Section 15.2. Indemnification by Williston.**

To the extent permitted by Florida law and subject to the limitations set out in Article 14, and subject to and as limited by the waiver of sovereign immunity recovery limits provided for in section

768.28(5), Florida Statutes regardless of the type or basis of the claim, Williston shall indemnify, defend and hold harmless FMPA, its officers, directors, agents, employees and Affiliates from and against any and all loss, costs, expense, claims, demands, liabilities (including reasonable attorneys' fees), judgments, fines, settlements and other amounts arising from any and all Claims relating to or arising out of:

- (a) any willful misconduct or illegal acts of Williston;
- (b) any damages awarded against FMPA in a Claim by a third party to the extent arising from the negligent acts or omissions of Williston or any of its agents or employees in exercising its rights or performing its obligations hereunder after the Effective Date.

## **ARTICLE 16 DISPUTE RESOLUTION**

### **Section 16.1. Resolution by Officers of the Parties.**

Except as otherwise expressly, specifically set forth herein, in the event of any dispute between the Parties as to a matter referred to herein or as to the interpretation of any part of this Agreement, including this Section 16.1 or as to the determination of any rights or obligations or entitlements arising from or related to this Agreement or as to the calculation of any amounts payable under this Agreement, the Parties shall refer the matter to their respective duly authorized representatives, for resolution. Should such representatives of the respective Parties fail to resolve the dispute within twenty (20) days from such referral, the Parties agree that any such dispute shall be first referred to non-binding mediation in accordance with Section 16.2. Should mediation be unsuccessful within the time specified in Section 16.2, the Parties may pursue any legal or equitable remedies available under Florida law.

### **Section 16.2. Mediation Procedures.**

A Party submitting a dispute to non-binding mediation pursuant to the procedures set forth in Florida Statutes, Section 44.101 (the "Requesting Party") shall do so by delivering to the other Party a notice demanding or requesting, as the case may be, mediation of the dispute and naming three acceptable mediators. Within ten (10) days after the receipt of the notice from the Requesting Party, the other Party shall, in writing, serve upon the Requesting Party a notice of acceptance of one of the three mediators provided or offer three alternate mediators for consideration. Within five (5) days, the Parties shall confer and mutually agree and appoint a mediator from the lists provided. To the extent practicable, the mediator shall have special competence and experience with respect to the subject matter of the dispute(s). No mediator appointed shall have the power to render any binding or enforceable award, order, decree or disposition or amend or add to this Agreement. Within ten (10) days after the mediator is appointed, a time and date for the mediation shall be scheduled and documented in writing. The mediator thereupon shall proceed promptly to hear and facilitate an amiable resolution of the controversy. If mediation is successful, any settlement achieved through mediation shall be confidential to the extent permissible under Florida law and not in violation of Chapter 119, Florida Statutes, and made in writing and in duplicate, and one copy shall be delivered to

each of the Parties. Each Party shall pay the costs of its own counsel and share equally the fee and cost of the mediator.

**Section 16.3 Settlement.**

If the resolution of the dispute and the terms of any settlement agreement, amendment to the Agreement or other document or instrument executed in connection therewith will require the approval of the governing board of a Party, a request for such approval shall be promptly submitted for the governing board's consideration. Once accepted by the Parties, the decision of mediator and any award made hereunder shall be binding upon each Party and the successors and assigns and any trustee or receiver of each Party.

**Section 16.4. Legal Remedies.**

If mediation is unsuccessful, either Party may pursue any legal rights and remedies made available under Florida Law. The Parties agree that the exclusive venue for any dispute arising hereunder that is not resolved through the dispute resolution procedures set forth in Section 16.1 and 16.2 shall be the appropriate federal, state, or county court located in Orange County Florida.

**Section 16.5. Continued Performance.**

Except to the extent a Party has the right to suspend performance under Section 13.3 hereof, no dispute shall interfere with the Parties' continued fulfillment of their obligations under this Agreement pending the outcome of the mediation process or a decision by the Florida courts.

**ARTICLE 17  
FORCE MAJEURE**

**Section 17.1. Force Majeure Standard.**

A Party shall be excused from performing its obligations under this Agreement and shall not be liable in damages or otherwise, if and only to the extent that it is unable to so perform or is prevented from performing by an event of Force Majeure.

**Section 17.2. Force Majeure Definition.**

An event of "Force Majeure" means an event of circumstance that prevents or unduly frustrates the performance by a Party of its obligations under this Agreement (other than the duty to make payments when due, which shall not be excused by Force Majeure) which is not within the reasonable control of, or the result of the negligence of, such Party and which by the exercise of due diligence such Party is unable to overcome or avoid. Force Majeure includes, without limitation, hurricanes, tornadoes, flood, lightning, drought, earthquake, fire, explosion, terrorist attack, civil disturbance, strikes, acts of God, acts of the public enemy, orders, directives (including the state security coordinator), restraints and requirements of the government and governmental agencies, either federal, state or local, civil or military, or any other cause beyond a Party's control. Force Majeure shall not include (i) events affecting the cost of operating any generating facility, (ii) changes in market conditions which cause the price of energy or capacity to fluctuate including without limitation,

weather, fuel prices and supply and demand, or (iii) the inability of a Party to make a profit or avoid a loss in performing its obligations under this Agreement.

**Section 17.3. Obligation to Diligently Cure Force Majeure.**

If a Party shall rely on the occurrence of an event of Force Majeure as a basis for being excused from performance of its obligations under this Agreement, then such Party shall:

(a) Provide written notice to the other Party promptly but in no event later than three (3) days after the occurrence of the event or condition giving an estimate of the expected duration and the probable impact on the performance of its obligations hereunder;

(b) Exercise all reasonable efforts to continue to perform its obligations hereunder;

(c) Expeditiously take reasonable action to correct or cure the event or condition excusing performance, provided that settlement of strikes or other labor disputes shall be completely within the sole discretion of the affected Party; and

(d) Exercise all reasonable efforts to mitigate or limit damages to the other Party. FMPA's reasonable efforts to mitigate or limit damage to Williston upon the occurrence of a Force Majeure impacting FMPA's power generation and transmission systems includes a diligent effort to purchase on the open market from other power generators and deliver electricity to Williston at the Delivery Point(s), the costs of which shall be shared on a pro rata basis among Williston and FMPA's Firm Load.

**ARTICLE 18  
MISCELLANEOUS**

**Section 18.1. Assignment; Successors and Assigns.**

This Agreement shall inure to the benefit of and bind the respective successors and permitted assigns of the Parties, including any successor to any Party by consolidation, merger, or acquisition of all or substantially all of the assets of such Party. No assignment by any Party (or any successor or assignee thereof) of its rights and obligations hereunder shall be made or become effective without the prior written consent of the other Party in each case obtained (which in the case of an assignment by FMPA shall include approval by the City Council of Williston), which consent shall not be unreasonably withheld, conditioned or delayed. Any assignments by any Party shall be in such form as to ensure that such Party's obligations under this Agreement will be assumed, accepted and honored fully and timely by any transferee, assignee or successor party.

**Section 18.2. Notices.**

With the exception of communications within the ordinary course of the day to day performance and administration of this Agreement, all notices, requests and other communications hereunder (herein collectively a "notice" or "notices") shall be deemed to have been duly delivered, given or made to or upon any Party if in writing and delivered by hand against receipt, or by certified or registered mail, postage pre-paid, return receipt requested, or to a courier who guarantees next

business day delivery or sent by telecopy (with confirmation by return telecopy) to such Party at its address set forth below or to such other address as such Party may at any time, or from time to time, direct by notice given in accordance with this Section 18.2.

IF TO FMPA:

Chief Operating Officer  
Florida Municipal Power Agency  
8553 Commodity Circle  
Orlando, FL 32819  
Tel. 407-355-7767  
Email: [ken.rutter@fmpa.com](mailto:ken.rutter@fmpa.com)

With required copy to:

Office of the General Counsel  
Florida Municipal Power Agency  
2061-2 Delta Way  
Tallahassee, FL 32303-4240  
P.O. Box 3209  
Tel. 850-297-2011  
Fax. 850-297-2012  
Email: [jody.finklea@fmpa.com](mailto:jody.finklea@fmpa.com)  
[dan.ohagan@fmpa.com](mailto:dan.ohagan@fmpa.com)

IF TO WILLISTON:

City of Williston  
Attn: City Manager  
50 NW Main Street  
PO Drawer 180  
Williston, Florida 32696-0160  
Tel: (352) 528-3060  
Email: [city.manager@willistonfl.org](mailto:city.manager@willistonfl.org)

With required copy to:

City of Williston  
Attn: Utility Director, C.J. Zimoski  
50 NW Main Street  
PO Drawer 180  
Williston, Florida 32696-0160  
Tel: (352) 528-3060  
Email: [cj.zimoski@willistonfl.org](mailto:cj.zimoski@willistonfl.org)

The date of delivery of any such notice, request or other communication shall be the earlier of (i) the date of actual receipt or (ii) three (3) business days after such notice, request or other communication is sent by certified or registered mail, (iii) if sent by courier who guarantees next business day delivery, the business day next following the day such notice, request or other communication is actually delivered to the courier or (iv) the day actually telecopied (with confirmation by return telecopy if on a business day, and if not, then the first business day thereafter).

**Section 18.3. Governing Law.**

The rights and obligations of the Parties shall be construed and interpreted in accordance with the substantive law of the State of Florida without giving effect to its principles for choice of law.

**Section 18.4. Confidentiality.**

Each Party shall keep confidential, and shall not disseminate to any third party (other than such Party's Affiliates) or use for any purpose other than the performance, administration, management and enforcement of this Agreement (except with the written authorization of the other Party), any information received from the other that is designated as confidential or proprietary by the other Party unless legally compelled by the Florida Sunshine Law (Chapter 119, Florida Statutes) disclosure requirements, deposition, inquiry, request for documents, subpoena, civil investigative demand or similar process, or by order of a court or tribunal of competent jurisdiction or in order to comply with applicable rules or requirements of any government department or agency or other regulatory authority, or other legal requirement or as necessary to enforce the terms of this Agreement. This Section 18.4 shall survive the termination of this Agreement for a period of two (2) years. If any Party is compelled to disclose any confidential information of the other Party that is exempt from the disclosure requirements of the Florida Sunshine Law, such Party shall provide the other Party with prompt notice of the requirement to disclose confidential information in order to enable the other Party, at such other Party's costs and expense, to seek an appropriate protective order or other remedy, and such Party shall consult with the other Party with respect to the other Party taking steps to resist or narrow the scope of any required disclosure. The Parties shall reasonably coordinate in the preparation and issuance of all publicity relating to this Agreement.

**Section 18.5. No Partnership.**

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

**Section 18.6. Captions.**

The captions to sections throughout this Agreement and attachments and appendices hereto are intended solely for ease of reference and to facilitate reading and reference to all sections and provisions of this Agreement and such attachments and appendices. Such captions shall not affect the meaning or interpretation of this Agreement or such attachment or appendices.

**Section 18.7. Entire Agreement and Amendments.**

This Agreement and all of the attachments and appendices referred to herein sets forth the entire agreement of the Parties with respect to the subject matter herein and takes precedence over all prior discussions or understandings. This Agreement may not be amended, modified or changed except by an agreement in writing signed by the Parties.

**Section 18.8. Severability.**

The invalidity or unenforceability of any provisions of this Agreement shall not affect the other provisions hereof. If any provision of this Agreement is held to be invalid, such provision shall not be severed from this Agreement; instead, the scope of the rights and duties created thereby shall be reduced to the minimum extent necessary to conform such provision to Applicable Law, preserving to the greatest extent the intent of the Parties to create such rights and duties as set out herein. If necessary to preserve the intent of the Parties, the Parties shall negotiate in good faith to amend this Agreement, adopting a substitute provision for the one deemed invalid or unenforceable that is legally binding and enforceable.

**Section 18.9 Further Assurances.**

In connection with this Agreement and the transactions contemplated hereby, upon the request of either Party the other Party shall execute and deliver any additional documents and instruments and perform any additional acts that may be reasonably necessary or appropriate to effectuate and perform the provision of this Agreement and such transactions and the intention of the Parties.

**Section 18.10 Laws and Regulations.**

This Agreement and the rights, obligations, and performances of the Parties under this Agreement are subject to all applicable state and federal laws, and to all duly promulgated orders and other duly authorized actions of governmental authorities having jurisdiction (“Applicable Laws”). Each Party hereto shall be responsible for taking all necessary actions to satisfy any regulatory and other requirements that may be imposed by any federal, state, or municipal statute, rule, regulation, or ordinance that may be in effect from time to time relative to the performance of such Party hereunder.

In the event that there is any change in Applicable Law that is promulgated after the Effective Date of this Agreement and that results in any additional or new costs, expenses, charges, fees and/or assessments (other than tax adjustments) that are attributable or related (in whole or in part) to the production and/or provision of Wholesale Electric Service, including environmental-related costs, renewable portfolio standards (only if applicable to wholesale contracts), charges, fees, or expenses incurred by FMPA to supply the Wholesale Electric Service and such costs, whether incurred as part of a voluntary or compulsory measure, are to be recovered through FMPA’s wholesale electric rates (“Change in Law Costs”), Williston shall reimburse FMPA for Williston’s pro-rata share of such costs, expenses, charges, fees and/or assessments, which amounts shall be calculated and recovered as determined by FMPA in a commercially reasonable manner. FMPA shall allocate variable Change in Law Costs to energy charges and fixed Change in Law Costs to demand charges. Change in Law Costs resulting from capital expenditures shall be allocated over the economic life of the asset(s). Change in Law Costs shall not include any costs recovered in the fuel charge. The determination of additional cost by FMPA shall be net of any reductions in costs associated with the

change in Applicable Laws. FMPA shall promptly notify Williston upon the determination of any additional or new costs, expenses, charges, fees and/or assessments and the calculation of the pro rata portion of such costs proposed to be recovered from Williston.

**Section 18.11. Counterparts.**

This Agreement and any amendment or modification hereto may be executed simultaneously in two or more counterparts, any of which need not contain the signatures of more than one Party, but all such counterparts taken together shall constitute one and the same Agreement or instrument.

**Section 18.12. Interpretation.**

In the event of any dispute concerning the construction or interpretation of this Agreement or any ambiguity hereof, there shall be no presumption that this Agreement or any provision hereof be construed against the Party who drafted this Agreement. In this Agreement, unless the context otherwise requires, the singular shall include the plural, the masculine shall include the feminine and neuter, and vice versa; the term “includes” or “including” shall mean including, without limitation; references to an Article, Section, Appendix or Schedule shall mean an Article, Section, Appendix or Schedule of this Agreement; and the terms “hereof”, “herein”, “hereto”, “hereunder”, and “herewith” refer to this Agreement as a whole. Reference to a given agreement or instrument shall be a reference to that agreement or instrument as modified, amended, supplemented and restated through the date as of which such reference is made.

**Section 18.13. Independent Relationship.**

Unless specifically and expressly set forth herein to contrary, nothing in this Agreement shall be construed or interpreted to make a Party of its employees or agents, the agent, representative or employees of the other Party.

**Section 18.14. No Third-Party Beneficiaries.**

This Agreement shall not confer any rights or remedies upon any third party hereto, except designated indemnitees and permitted assignees and successors.

**Section 18.15. Waivers.**

The failure of a Party hereto to exercise any right or remedy or enforce at any time any provision of this Agreement shall not be construed to be a waiver of such right, remedy or provision, nor in any way to affect the validity of this Agreement or any part hereof or the right of a Party thereafter to exercise such right or remedy or enforce each and every such provision. In order to be enforceable, a waiver under this Agreement must be in writing, state that it is a waiver and be signed by an authorized representative of the Party to be bound thereby. Any waiver shall be subject to the terms, conditions and limitations thereof, and no waiver of any breach, default or non-performance of this Agreement shall be held to constitute a waiver of any other or subsequent breach, default or non-performance of this Agreement.

**Section 18.16. Duty to Mitigate.**

Each Party agrees that it has a duty to mitigate damages and covenants that it will use commercially reasonable efforts consistent with Prudent Utility Practice to minimize any damages it may incur as a result of any other Party's breach, default or non-performance of this Agreement.

**Section 18.17. 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.

[REMAINDER OF PAGE INTENTIONALLY BLANK – SIGNATURE PAGE(S) FOLLOW]

IN WITNESS WHEREOF, and intending to be legal bound hereby, the Parties have caused this Agreement for Purchase and Sale of Electric Energy and Capacity to be duly executed as an instrument under seal by their respective duly authorized representatives as of the date and year first above written.

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

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

Jacob Williams, General Manager and CEO

**CITY OF WILLISTON**

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

Jerry Robinson, Mayor

Attest: \_\_\_\_\_

Latricia Wright, City Clerk

## APPENDIX A

### PRICING FOR WHOLESALE ELECTRIC SERVICE

#### 1. Capacity Charge:

The billing determinant is the highest metered energy amount, integrated over an hour and grossed up for DEF transmission losses using DEF's published real power loss factor, provided during any one hour of the billing month as measured at the Metering Point(s).

Year	\$/kW-month
2021	████████
2022	████████
2023	████████
2024	████████
2025	████████
2026	████████
2027	████████
2028	████████

\* By mutual agreement, rate subject to change

#### 2. Non-Fuel Energy Charge: █████ MWh

The billing determinant is the total scheduled energy for the billing month.

#### 3. Fuel Energy Charge: █████ MMBtu/MWh x Gas Index\*

The billing determinant is the total scheduled energy for the billing month;

\*Gas Index (\$/MMBtu):

$$Gas\ Index = \frac{\text{████████████████████}}{\text{████████} \times \text{████████████████████}}$$

\*Gas Index: For Hours Ending 1 through 10, the Daily Price Survey Midpoint gas price for Florida Gas Transmission ("FGT") Zone 3 as published in Platts Gas Daily for the prior Gas Day ██████████

[REDACTED] with FGT's then-current Tariff Rate Schedule FTS-2. For Hours Ending 11 through 24, the Daily Price Survey Midpoint gas price for Florida Gas Transmission ("FGT") Zone 3 as published in Platts Gas Daily for the day of scheduled energy [REDACTED]  
[REDACTED] Rate Schedule FTS-2.

## **AGENDA ITEM 9 – INFORMATION ITEMS**

### **e) Review of Finance Committee Items**

**Executive Committee  
August 20, 2020**



# **BOD 9d – EC 9e – Review of Finance Committee Items**

Board of Directors and Executive Committee

August 11, 2020

# Finance Committee Items

## *Possible Action Items for Next Meeting*

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Review and Approval of Agency budget amendment (OPEB adjustment)

Review and Approval of Small Project Budget amendments (Stanton, Tri-City, St. Lucie)

Approve Risk Management Policies and Compliance Reports

Approval of Wells Fargo Line of Credit extension (EC)

# Recommended Action

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- Information only. No action required

**AGENDA ITEM 10 – MEMBER COMMENTS**

**Executive Committee  
August 20, 2020**

**AGENDA ITEM 11 – ADJOURNMENT**

**Executive Committee  
August 20, 2020**