

**Lee County Board of County Commissioners
Agenda Item Summary**

Blue Sheet No. 20020991

1. REQUESTED MOTION:

ACTION REQUESTED: Consider approval of Amendment No. 2 to the Interconnection Agreement between Florida Power & Light Company (FPL) and Lee County for connection to the Waste-to-Energy facility, relating to corrected verbiage for insurance and indemnification.

WHY ACTION IS NECESSARY: All contracts, agreements and the amendments thereto must be approved by the Board of County Commissioners at a regular meeting.

WHAT ACTION ACCOMPLISHES: Revises and restates the insurance and indemnification provisions of the Interconnection Agreement between FPL and Lee County for the County's connection of the Waste-to-Energy facility to the FPL grid.

2. DEPARTMENTAL CATEGORY:
COMMISSION DISTRICT #

C12D

3. MEETING DATE:

09-10-2002

4. AGENDA:

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

5. REQUIREMENT/PURPOSE:
(Specify)

- STATUTE
- ORDINANCE
- ADMIN. CODE
- OTHER Agreement

6. REQUESTOR OF INFORMATION:

- A. COMMISSIONER**
- B. DEPARTMENT** County Attorney
- C. DIVISION** General Services
- BY:** David M. Owen, Chief Assistant County Attorney

7. BACKGROUND: In October, 1992, the County entered into an Interconnection Agreement with FPL for connecting the Waste-to-Energy facility to the FPL grid. The original Agreement contained provisions for indemnification and insurance that have since been found to be illegal.

(BACKGROUND CONTINUED - NEXT PAGE)

8. MANAGEMENT RECOMMENDATIONS:

9. RECOMMENDED APPROVAL:

A Department Director	B Purchasing or Contracts	C Human Resources	D Other	E County Attorney	F Budget Services				G County Manager
N/A	N/A	N/A	N/A	<i>[Signature]</i> 8/26/02	QA 8/27/02	GM 8/29/02	RISK 8/29/02	GC 8/29/02	<i>[Signature]</i>

10. COMMISSION ACTION:

- APPROVED
- DENIED
- DEFERRED
- OTHER

**RECEIVED BY
COUNTY ADMIN. CA**
8-27-02
4:30
**COUNTY ADMIN.
FORWARDED TO:**
8/29 11:30

**CO. ATTORNEY
FORWARDED
TO CO. ADMIN.**
8-23-02

BACKGROUND: (Continued)

As the result of negotiations with FPL, a Second Amendment to the Interconnection Agreement has been developed which contains revised verbiage for the insurance and indemnification provisions which are now consistent with Florida law and the Attorney General's opinions thereon.

Approval of the Second Amendment to the Interconnection Agreement with FPL is recommended in order to continue the interconnection of the Waste-to-Energy facility to the FPL grid, meet all of the other terms and conditions of the Agreement and comply with general law.



Florida Power & Light Company, P. O. Box 14000, Juno Beach, FL 33408-0420
Law Department

02 AUG 19 AM 8:11
LEE COUNTY ATTORNEY

August 14, 2002

David M. Owen, Esq.
Lee County Southwest Florida
Board of County Commissioners
P O Box 398
Ft. Myers, FL 33902-0398

Re: Lee County Interconnection Agreement

Dear David:

I was reviewing this file for closure and, to my astonishment, can find no transmittal of this agreement to you.

I was sure I had sent it, but in the event I had not, here is another copy containing the provisions you requested.

Please execute this in the appropriate manner and return an original to me at your convenience.

Very truly yours,

A large, stylized handwritten signature in black ink, appearing to read 'Jay W. Molyneux'.

Jay W. Molyneux

JWM/ts

Enclosure

1 AMENDMENT NO. 2 TO THE
 2 LEE COUNTY RESOURCE RECOVERY FACILITY
 3 INTERCONNECTION AGREEMENT
 4 BETWEEN
 5 FLORIDA POWER & LIGHT COMPANY
 6 AND
 7 LEE COUNTY, FLORIDA

8
 9 This Amendment No. 2 To The Lee County Resource Recovery Facility Interconnection
 10 Agreement between Florida Power & Light Company and Lee County, Florida ("Amendment No.
 11 2"), is made and entered this ____ day of _____, 2002, by and between Florida Power & Light
 12 Company ("FPL"), a corporation organized and existing under the laws of the State of Florida (the
 13 "State"), and Lee County, Florida ("LEE"), a political subdivision of the State. FPL and LEE may
 14 from time to time be identified individually as a "Party" and are collectively identified herein as the
 15 "Parties".

16
 17 **RECITALS**

18 **WHEREAS**, FPL, an investor-owned utility, owns and operates electrical generation, transmission
 19 and distribution facilities in portions of the State;

20
 21 **WHEREAS**, LEE, owns and operates the Lee County Resource Recovery Facility ("LCRR
 22 Facility"), an electrical generating resource recovery facility located in close proximity to FPL's
 23 Buckingham Substation ("Buckingham") in Lee County, Florida;

24
 25 **WHEREAS**, the LCRR Facility has been certified as a "qualifying facility" pursuant to the Public
 26 Utility Regulatory Policies Act of 1978 and the rules and regulations of the Federal Energy
 27 Regulatory Commission ("FERC") promulgated pursuant thereto;

28
 29 **WHEREAS**, FPL and LEE have established terms and conditions for the interconnected operation
 30 of FPL's electrical system and the LCRR Facility, and for the construction, operation and
 31 maintenance responsibilities for Buckingham and interconnection facilities in compliance with
 32 Florida Public Service Commission ("FPSC") Rule 25-17.087, as set forth in the Lee County

1 Resource Recovery Facility Interconnection Agreement between Florida Power & Light Company
2 and Lee County, Florida dated October 28, 1992 ("Interconnection Agreement");
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4 **WHEREAS**, it is intended that the LCCR Facility will be operated within Seminole Electric
5 Cooperative, Inc.'s ("SECI") Control Area; and
6

7 **WHEREAS**, the Interconnection Agreement shall be amended to reflect changes in the insurance
8 provisions between the LCRR Facility and FPL;
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12 **NOW, THEREFORE**, in consideration of the mutual covenants contained herein, and in
13 accordance with the Parties' respective obligations under FPSC and FERC rules and regulations, the
14 Parties agree as follows:
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18 **ARTICLE XV**
19 **INSURANCE**
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21 **Section 15.1 General:** Customer shall, at its own expense, maintain in force throughout the
22 period of this Agreement the following insurance coverages, with insurers authorized to do
23 business in Florida:
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25 **Section 15.2** Employers Liability and Worker's Compensation Insurance providing statutory
26 benefits in accordance with the laws and regulations of the State of Florida.
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28 **Section 15.3** Commercial General Liability Insurance including premises and operations,
29 personal injury, broad form property damage, broad form blanket contractual liability coverage
30 (including coverage for the contractual indemnification) products and completed operations
31 coverage, coverage for explosion, collapse and underground hazards, independent contractors

1 coverage, coverage for pollution to the extent normally available and punitive damages to the extent
2 normally available.

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4 **Section 15.4** Comprehensive Automobile Liability Insurance for coverage of owned, non-owned,
5 and hired vehicle, trailers or semi-trailers designed for travel on public roads, for bodily injury,
6 including death, and property damage.

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8 **Section 15.5** The requirements contained herein to the types and limits of all insurance to be
9 maintained by the Customer are not intended to and shall not in any manner, limit or qualify the
10 liabilities and obligations assumed by the Parties under this Agreement.

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12 **Section 15.6** The Parties agree to report to each other in writing as soon as practical all
13 accidents or occurrences resulting in injuries to any person, including death, and any property
14 damage arising out of this Agreement.

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16 Article 16 of the Interconnection Agreement shall be amended as follows:

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18 **ARTICLE XVI**

19 **INDEMNITY**

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21 **Section 16.1** Customer agrees to indemnify and hold FPL, its shareholders, directors, partners,
22 stakeholders, officers, managers, employees, agents, representatives, servants, its affiliated and
23 associated companies, their respective shareholders, directors, partners, stakeholders, officers,
24 managers, employees, agents, representatives, servants, and/or their assigns, harmless from and
25 against any and all claims, demands, liability, losses, damage, costs or expenses (including
26 attorneys' fees and other costs of defense), of any nature or kind whatsoever, including but not
27 limited to, claims, demands and/or liability for personal injury to (including death of) any person
28 whomever (including payments and awards made to Customer's employees or other under any
29 workers' compensation law or under any plan for employees' disability and death benefits) and
30 for damage to any property whatsoever (including Customer's Facilities and the FPL
31 Transmission System) arising out of or otherwise resulting from the use, ownership,
32 maintenance, or operation of the Facility or Customer's Interconnection Facilities, regardless of

1 whether such claims, demands or liability are alleged to have arisen out of FPL's status as the
2 owner or operator of facilities involved; provided, however, that the provisions of this Section
3 16.1 shall not apply if any such personal injury or property damage is held to have been caused
4 by the negligence or intentional wrongdoing of FPL, its agents or employee. This section shall
5 be construed to fully comply with Florida's sovereign immunity laws and shall not be construed
6 nor interpreted to waive or otherwise limit Customer's protections thereunder.

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9 **Section 16.2** FPL agrees to indemnify and hold Customer, its shareholders, directors, partners,
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11 associated companies, their respective shareholders, directors, partners, stakeholders, officers,
12 managers, employees, agents, representative, servants, and/or their assigns, harmless from and
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14 attorneys' fees and other costs of defense), of any nature or kind whatsoever, including, but not
15 limited to, claims, demands and/or liability for personal injury to (including death of) any person
16 whomever (including payments and awards made to FPL's employees or other under any
17 workers' compensation law or under any plan for employees' disability and death benefits) and
18 for damage to any property whatsoever (including FPL's Interconnection Facilities and the FPL
19 Transmission System) arising out of or otherwise resulting from the use, ownership,
20 maintenance, or operation of FPL's Transmission System, regardless of whether such claims,
21 demands or liability are alleged to have arisen out of Customer's status as the owner or operator
22 of facilities involved; provided, however, that the provisions of this Section 16.2 shall not apply
23 if any such personal injury or property damage is held to have been caused by the negligence or
24 intentional wrongdoing of Customer, its agents or employees.

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26 **Section 16.3** Neither Party shall be liable in statute, contract, in tort (including negligence),
27 strict liability, or otherwise to the other Party, its agents, representatives, its affiliate and
28 associated companies, and/or assigns, for any incidental or consequential loss or damage
29 whatsoever, including, but not limited to, loss of profits or revenue on work not performed, for
30 loss of use of or under-utilization of the other Party's facilities, or loss of use of revenue or loss
31 of anticipated profits, resulting from either Party's performance or non-performance of an
32 obligation imposed on it by this Agreement.

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(The following pages, 6 and 7 are the signature pages)

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3 officers, and copies delivered to each Party, as of the day and year first above stated.
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ATTEST:

FLORIDA POWER & LIGHT COMPANY

Vice President

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6 **ATTEST:**

LEE COUNTY
BOARD OF COUNTY COMMISSIONERS

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County Manager

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**AMENDMENT NO. 2 TO THE
LEE COUNTY RESOURCE RECOVERY FACILITY
INTERCONNECTION AGREEMENT
BETWEEN
FLORIDA POWER & LIGHT COMPANY
AND
LEE COUNTY, FLORIDA**

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This Amendment No. 2 To The Lee County Resource Recovery Facility Interconnection Agreement between Florida Power & Light Company and Lee County, Florida ("Amendment No. 2"), is made and entered this ____ day of _____, 2002, by and between Florida Power & Light Company ("FPL"), a corporation organized and existing under the laws of the State of Florida (the "State"), and Lee County, Florida ("LEE"), a political subdivision of the State. FPL and LEE may from time to time be identified individually as a "Party" and are collectively identified herein as the "Parties".

RECITALS

WHEREAS, FPL, an investor-owned utility, owns and operates electrical generation, transmission and distribution facilities in portions of the State;

WHEREAS, LEE, owns and operates the Lee County Resource Recovery Facility ("LCRR Facility"), an electrical generating resource recovery facility located in close proximity to FPL's Buckingham Substation ("Buckingham") in Lee County, Florida;

WHEREAS, the LCRR Facility has been certified as a "qualifying facility" pursuant to the Public Utility Regulatory Policies Act of 1978 and the rules and regulations of the Federal Energy Regulatory Commission ("FERC") promulgated pursuant thereto;

WHEREAS, FPL and LEE have established terms and conditions for the interconnected operation of FPL's electrical system and the LCRR Facility, and for the construction, operation and maintenance responsibilities for Buckingham and interconnection facilities in compliance with Florida Public Service Commission ("FPSC") Rule 25-17.087, as set forth in the Lee County

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5 Cooperative, Inc.'s ("SECI") Control Area; and

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7 **WHEREAS**, the Interconnection Agreement shall be amended to reflect changes in the insurance
8 provisions between the LCRR Facility and FPL;

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12 **NOW, THEREFORE**, in consideration of the mutual covenants contained herein, and in
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18 **ARTICLE XV**
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ATTEST:

FLORIDA POWER & LIGHT COMPANY

Vice President

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LEE COUNTY
BOARD OF COUNTY COMMISSIONERS

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10 County Manager
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**AMENDMENT NO. 2 TO THE
LEE COUNTY RESOURCE RECOVERY FACILITY
INTERCONNECTION AGREEMENT
BETWEEN
FLORIDA POWER & LIGHT COMPANY
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(The following pages, ~~6~~ and ~~7~~ are the signature pages)

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2 executed as of this _____ day of _____, 2002 , by their duly authorized
3 officers, and copies delivered to each Party, as of the day and year first above stated.

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ATTEST:

FLORIDA POWER & LIGHT COMPANY

Vice President

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ATTEST:

LEE COUNTY
BOARD OF COUNTY COMMISSIONERS

County Manager

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LEE COUNTY RESOURCE RECOVERY FACILITY
INTERCONNECTION AGREEMENT
BETWEEN
FLORIDA POWER & LIGHT COMPANY
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30 of FPL's electrical system and the LCRR Facility, and for the construction, operation and
31 maintenance responsibilities for Buckingham and interconnection facilities in compliance with
32 Florida Public Service Commission ("FPSC") Rule 25-17.087, as set forth in the Lee County

1 Resource Recovery Facility Interconnection Agreement between Florida Power & Light Company
2 and Lee County, Florida dated October 28, 1992 ("Interconnection Agreement");
3

4 **WHEREAS**, it is intended that the LCCR Facility will be operated within Seminole Electric
5 Cooperative, Inc.'s ("SECI") Control Area; and
6

7 **WHEREAS**, the Interconnection Agreement shall be amended to reflect changes in the insurance
8 provisions between the LCRR Facility and FPL;
9

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11
12 **NOW, THEREFORE**, in consideration of the mutual covenants contained herein, and in
13 accordance with the Parties' respective obligations under FPSC and FERC rules and regulations, the
14 Parties agree as follows:
15
16
17

18 **ARTICLE XV**
19 **INSURANCE**
20

21 **Section 15.1 General:** Customer shall, at its own expense, maintain in force throughout the
22 period of this Agreement the following insurance coverages, with insurers authorized to do
23 business in Florida:
24

25 **Section 15.2** Employers Liability and Worker's Compensation Insurance providing statutory
26 benefits in accordance with the laws and regulations of the State of Florida.
27

28 **Section 15.3** Commercial General Liability Insurance including premises and operations,
29 personal injury, broad form property damage, broad form blanket contractual liability coverage
30 (including coverage for the contractual indemnification) products and completed operations
31 coverage, coverage for explosion, collapse and underground hazards, independent contractors

1 coverage, coverage for pollution to the extent normally available and punitive damages to the extent
2 normally available.

3
4 **Section 15.4** Comprehensive Automobile Liability Insurance for coverage of owned, non-owned,
5 and hired vehicle, trailers or semi-trailers designed for travel on public roads, for bodily injury,
6 including death, and property damage.

7
8 **Section 15.5** The requirements contained herein to the types and limits of all insurance to be
9 maintained by the Customer are not intended to and shall not in any manner, limit or qualify the
10 liabilities and obligations assumed by the Parties under this Agreement.

11
12 **Section 15.6** The Parties agree to report to each other in writing as soon as practical all
13 accidents or occurrences resulting in injuries to any person, including death, and any property
14 damage arising out of this Agreement.

15
16 Article 16 of the Interconnection Agreement shall be amended as follows:

17
18 **ARTICLE XVI**
19 **INDEMNITY**

20
21 **Section 16.1** Customer agrees to indemnify and hold FPL, its shareholders, directors, partners,
22 stakeholders, officers, managers, employees, agents, representatives, servants, its affiliated and
23 associated companies, their respective shareholders, directors, partners, stakeholders, officers,
24 managers, employees, agents, representatives, servants, and/or their assigns, harmless from and
25 against any and all claims, demands, liability, losses, damage, costs or expenses (including
26 attorneys' fees and other costs of defense), of any nature or kind whatsoever, including but not
27 limited to, claims, demands and/or liability for personal injury to (including death of) any person
28 whomever (including payments and awards made to Customer's employees or other under any
29 workers' compensation law or under any plan for employees' disability and death benefits) and
30 for damage to any property whatsoever (including Customer's Facilities and the FPL
31 Transmission System) arising out of or otherwise resulting from the use, ownership,
32 maintenance, or operation of the Facility or Customer's Interconnection Facilities, regardless of

1 whether such claims, demands or liability are alleged to have arisen out of FPL's status as the
2 owner or operator of facilities involved; provided, however, that the provisions of this Section
3 16.1 shall not apply if any such personal injury or property damage is held to have been caused
4 by the negligence or intentional wrongdoing of FPL, its agents or employee. This section shall
5 be construed to fully comply with Florida's sovereign immunity laws and shall not be construed
6 nor interpreted to waive or otherwise limit Customer's protections thereunder.

7
8
9 **Section 16.2** FPL agrees to indemnify and hold Customer, its shareholders, directors, partners,
10 stakeholders, officers, managers, employees, agents, representatives, servants, its affiliated and
11 associated companies, their respective shareholders, directors, partners, stakeholders, officers,
12 managers, employees, agents, representative, servants, and/or their assigns, harmless from and
13 against any and all claims, demands, liability, losses, damage, costs or expenses (including
14 attorneys' fees and other costs of defense), of any nature or kind whatsoever, including, but not
15 limited to, claims, demands and/or liability for personal injury to (including death of) any person
16 whomever (including payments and awards made to FPL's employees or other under any
17 workers' compensation law or under any plan for employees' disability and death benefits) and
18 for damage to any property whatsoever (including FPL's Interconnection Facilities and the FPL
19 Transmission System) arising out of or otherwise resulting from the use, ownership,
20 maintenance, or operation of FPL's Transmission System, regardless of whether such claims,
21 demands or liability are alleged to have arisen out of Customer's status as the owner or operator
22 of facilities involved; provided, however, that the provisions of this Section 16.2 shall not apply
23 if any such personal injury or property damage is held to have been caused by the negligence or
24 intentional wrongdoing of Customer, its agents or employees.

25
26 **Section 16.3** Neither Party shall be liable in statute, contract, in tort (including negligence),
27 strict liability, or otherwise to the other Party, its agents, representatives, its affiliate and
28 associated companies, and/or assigns, for any incidental or consequential loss or damage
29 whatsoever, including, but not limited to, loss of profits or revenue on work not performed, for
30 loss of use of or under-utilization of the other Party's facilities, or loss of use of revenue or loss
31 of anticipated profits, resulting from either Party's performance or non-performance of an
32 obligation imposed on it by this Agreement.

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(The following pages, 6 and 7 are the signature pages)

1 **IN WITNESS WHEREOF**, the Parties have caused this Amendment No. 2 to be
2 executed as of this _____ day of _____, 2002 , by their duly authorized
3 officers, and copies delivered to each Party, as of the day and year first above stated.

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ATTEST:

FLORIDA POWER & LIGHT COMPANY

Vice President

1 **IN WITNESS WHEREOF**, the Parties have caused this Amendment No. 2 to be
2 executed as of this _____ day of _____, 2002, by their duly authorized
3 officers, and copies delivered to each Party, as of the day and year first above stated.

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ATTEST:

LEE COUNTY
BOARD OF COUNTY COMMISSIONERS

County Manager