

MAY 16 1975

Distribution:
Docket file ✓
LWR 2-3 Rtg.
L. Engle
V. Moore
M. Karman, ELD

Docket No. 50-302

D. Skovholt, Assistant Director for Quality Assurance and Operations, DRL
TECHNICAL ASSISTANCE REQUEST

Your assistance is requested for the following:

PLANT NAME: Crystal River, Unit 3
DOCKET NO. 50-302
PLANT STATUS: OL
PROJECT MANAGER: L. B. Engle, LWR 2-3
REVIEW BRANCH: Quality Assurance and Operations
SCOPE OF REVIEW:

Florida Power Company is proposing a joint cost-power venture with approximately 16 utilities or municipalities for their Crystal River, Unit 3 facility. Concerning this venture, the applicant desires to know if any and/or what financial information or requirements will be required by NRC concerning their OP and OL license. The applicant has scheduled July 15, 1975 for formal signing of Participation Agreement with the utilities involved.

Please review the applicant's Participation Agreement enclosed and provide us with the specific information and/or requests (if any) which NRC will require of the Licensee(s) regarding these matters.

TARGET DATE: May 28, 1975

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Original Signed by
S. MacKay

V. A. Moore, Assistant Director
for Light Water Reactors Group 2
Division of Reactor Licensing

Enclosure: Crystal River Unit No. 3
Participation Agreement

cc: J. Peterson

memo
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|-----------|-------------|--------------------------------|----------------------|--|-------------|---|
| OFFICE → | LWR 2-3 | 50-302 LWR 2-3 Schwencer | AD: LWR 2-3 Moore | | | |
| SURNAME → | LEngle, pam | ASchwencer | Moore | | 8003-170512 | I |
| DATE → | 5/19/75 | 5/19/75 | 5/19/75 | | | |

CRYSTAL RIVER UNIT No. 3

PARTICIPATION AGREEMENT

THIS AGREEMENT, dated as of _____, 1975, is between FLORIDA POWER CORPORATION (the "Company"), a corporation organized and existing under the laws of the State of Florida, and PARTICIPANTS (a complete description of the PARTICIPANTS appears in Exhibit A attached hereto and made a part hereof).

WITNESSETH:

(Suggest Section on Definitions be included here)

A. COMPANY and PARTICIPANTS desire and intend to establish their ownership rights in the 825 MW nominally rated nuclear generating unit known as the Crystal River Unit No. 3 ("CR-3") located near Crystal River in Citrus County, Florida, as more particularly described in the Application, and amendments thereto, by COMPANY before the Nuclear Regulatory Commission in Docket No. 50-302.

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NOW, THEREFORE, in consideration of the premises and the mutual agreements herein set forth, COMPANY and PARTICIPANTS hereby agree as follows:

SECTION 1. Sale of 10% Undivided Interest in CR-3

(a) By separate documents of even date with this Agreement, COMPANY has conveyed to PARTICIPANTS an undivided 10% ownership interest as Tenants in Common in CR-3.

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(b) For reference purposes, and as a Memorandum of Understanding relating to the documents of conveyance prior to their actual execution, the following is the agreement of COMPANY and PARTICIPANTS pertaining to the above-described sale:

(c) CR-3 shall consist of:

(i) The land rights described in Exhibits B1 and B2 (such land rights, together with all such additional land or rights therein as may hereinafter be acquired for the purpose specified in clause (iv) below, being hereinafter called the "Land");

(ii) CR-3, including the nuclear power reactors, the turbine-generators, the buildings housing the same, and the associated auxiliaries and equipment, all as more particularly described in the Application described in Paragraph A of the foregoing recitals;

(iii) Materials, supplies, fuel, tools, and equipment, including spare parts for use in construction of CR-3; and

(iv) Such additional land rights therein as may be acquired, and such additional facilities and other tangible property, as may be acquired, constructed, installed or replaced in connection with CR-3, provided (1) that the cost of such additional land or rights therein or of such additional facilities or other tangible property shall be properly recordable in accordance with the Uniform System of Accounts (as herein defined), and (2) that such additional land rights therein or such additional facilities or other tangible property shall have been acquired, constructed, installed or replaced for the common use of COMPANY and PARTICIPANTS under and subject to the provisions of this Agreement.

(d) Sale of Assets. COMPANY will sell and convey to PARTICIPANTS, and PARTICIPANTS will purchase from COMPANY, an undivided ownership interest as a

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tenant in common in CR-3. PARTICIPANTS interest will be determined by their Generation Entitlement Share. Such conveyance will be by License Agreement and Bill of Sale substantially in the form of Exhibit ___ attached hereto and made a part hereof. From time to time after the Closing, COMPANY and PARTICIPANTS shall execute such other instruments of conveyance and transfer as may be necessary or appropriate to vest in PARTICIPANTS such 10% undivided ownership interest in and to CR-3 as is intended in this Agreement.

(e) Purchase Price and Payment.

(i) The purchase price for PARTICIPANTS 10% undivided interest in CR-3 acquired, constructed or completed prior to the June 30, 1975 shall be an amount equal to 11% of the aggregate of all Cost of Construction of CR-3 (as herein defined) incurred by the COMPANY up to June 30, 1975.

It is recognized that the COMPANY will have made payments of the accumulated Cost of Construction prior to the June 30, 1975. In view of such fact, the Allowance for Funds Used During Construction (AFC) charged to the Unit on the COMPANY'S books of record, shall be included as accumulated Cost of Construction. As of June 30, 1975, 11% of the aggregate of all Cost of Construction of CR-3 incurred by the COMPANY prior to such date, including AFC, is estimated to be \$ _____, which will be shared by the PARTICIPANTS in proportion to their respective Generation Entitlement shares.

The purchase price for PARTICIPANT'S 10% undivided interest in CR-3 acquired, constructed or completed prior to the June 30, 1975 shall be payable to

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the COMPANY at the Closing in immediately available funds.

(ii) The COMPANY will make available to PARTICIPANTS all records regarding Cost of Construction of CR-3 sufficient to allow PARTICIPANTS to determine that such costs and expenditures imputed to CR-3 by the COMPANY pursuant to this Section 1 (e) are in compliance with the Uniform of System of Accounts.

(iii) For purposes of this Agreement, Construction Costs shall include the costs incurred by the COMPANY in CR-3, including: The costs incurred or contributed by the COMPANY for nuclear training, feasibility studies, site evaluation studies, preparation of invitation for bids, bid evaluations and contract negotiations for equipment, systems, Nuclear Fuel and services and for activities undertaken to secure permits, licenses, authorizations and approvals from any regulatory authority for CR-3.

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(iv) Subsequent to June 30, 1975, all construction costs incurred by the Company to complete construction of CR-3, excluding AFC, will be shared by the COMPANY and PARTICIPANTS in proportion to their respective Generation Entitlement Shares. These accumulated expenditures are properly recordable in accordance with the Electric Plant Instructions and in appropriate accounts as set forth in the Federal Power Commission Uniform System of Accounts prescribed for Public Utilities and Licensees (Class A and Class B) (the "Uniform System of Accounts").

(v) Capital improvement costs subsequent to final completion of CR-3, excluding AFC, will be shared by the COMPANY and PARTICIPANTS in proportion to their respective Generation Entitlement Shares.

(vi) Payment for the expenditures contemplated in Section 1(e) (iv) and Section 1 (e) (v) will be payable in advance at the beginning of the month in which the construction work is to take place. The first such payment shall be due at Closing. Payments will be based

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on an invoice; however, a forecast of the cash requirements shall be made for each quarterly period commencing on the first day of January, April, July and October. These forecasts will be for each month for the first two quarterly periods immediately following the issuance of the forecast. Revisions and forecasts will be made every three months. Payments are due at time of invoicing in accordance with provisions outlined in Section 5(d) (vii).

(vii) The COMPANY shall have sole authority in decisions regarding Units of Property retired from service, whether considered original construction or capital improvements. Costs of removal and salvage credits, if any, from retired units of property will be shared by the PARTICIPANTS in proportion to their respective Generation Entitlement Shares.

SECTION 2. Closing. The closing of the sale and transfer provided for in Section 1 hereof (the "Closing") will take place at 10:00 A.M. on July 15, 1975, at the offices of COMPANY.

SECTION 3. Certain Representations and Warranties by PARTICIPANTS. PARTICIPANTS hereby represent, warrant and covenant to the COMPANY as follows:

(a) PARTICIPANT'S Organization. Each PARTICIPANT is an entity duly organized, validly existing and in good standing under Florida Statutes and other applicable laws of the State of Florida and has corporate power to carry on business as it is now being conducted and as it is contemplated to be conducted after the Closing. The PARTICIPANTS delivered to the COMPANY a true and complete copy of their respective charter and by-laws as amended to date. Each warrants that they are financially able to assume the responsibilities contemplated by this Agreement and have thus delivered audited financial statements to the COMPANY.

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(b) Members. Set forth in Exhibit is a true and complete list of all PARTICIPANTS.

(c) Authority Relative to this Agreement. The execution, delivery and performance of this Agreement by the PARTICIPANTS have been duly and effectively authorized by all requisite corporate and other requisite action.

SECTION 4. Certain Representations and Warranties by the COMPANY. The COMPANY hereby represents and warrants to PARTICIPANTS as follows:

(a) The COMPANY'S Organization. The COMPANY is a corporation duly organized, validly existing and in good standing under the laws of the State of Florida and has corporate power to carry on its business as it is now being conducted.

(b) Authority Relative to this Agreement. The execution, delivery and performance of this Agreement by the COMPANY have been duly and effectively authorized by all requisite corporate action.

SECTION 5. Certain Agreements between the COMPANY and PARTICIPANTS. The COMPANY and PARTICIPANTS hereby covenant and agree as follows:

(a) Responsibility for Construction. The COMPANY shall have sole responsibility, to be discharged in a prudent manner in accordance with good utility practices, for the planning, licensing, design, construction and testing of CR-3. The COMPANY will use its reasonable best efforts fully to comply with all requirements of all applicable statutes and the rules and regulations of the Nuclear Regulatory Commission and such other regulatory agencies as shall have competent jurisdiction over the planning, design, licensing, construction, operation, maintenance and disposal of CR-3. The COMPANY shall not be liable or responsible for any delay in CR-3 commencing Commercial Operation caused by force majeure. The term "force

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"force majeure" as used herein shall mean, without limitation, the following: acts of God; strikes; lockouts or other industrial disturbances; acts of public enemies; orders, or absence of necessary orders and permits of any kind of the government of the United States or of the State of Florida or any of their departments, agencies or officials, or any civil or military authority pertaining to CR-3 insurrections; riots; extraordinary delay in transportation; unforeseen soil conditions; equipment, material, supplies, labor, or machinery shortages; epidemics; landslides; lightning; earthquakes; fire; hurricanes; tornadoes; storms; floods; washouts; drought; arrest; war; civil disturbances; explosions; breakage or accident to machinery, transmission lines, pipes or canals; partial or entire failure of utilities; breach of contract by any supplier, contractor, subcontractor, laborer or materialman; sabotage; injunction; blight; famine; blockage; quarantine; or any other similar cause or event not reasonably within the control of the COMPANY. The COMPANY agrees, however, to remedy with all reasonable dispatch the cause or causes preventing the COMPANY from carrying out its agreements; provided, that the settlement of strikes, lockouts and other industrial disturbances shall be entirely within the discretion of the COMPANY and the COMPANY shall not be required to make settlement of strikes, lockouts and other industrial disturbances by acceding to the demands of the opposing party or parties when such course is in the judgment of the COMPANY unfavorable to the COMPANY.

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(b) Agency. PARTICIPANTS hereby irrevocably appoint the COMPANY their agent in connection with CR-3 to act on their behalf in the planning, design, licensing, construction, acquisition, completion, maintenance, operation and disposal of CR-3 and authorize the COMPANY in the name and on behalf of PARTICIPANTS to take all reasonable actions which, in the discretion and judgment of the COMPANY, are deemed necessary or advisable to effect the planning, design, licensing,

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construction, acquisition, completion, maintenance, operation and disposal of CR-3, including without limitation, the following:

(i) The making of such agreements and modifications of existing agreements and the taking of such other action as the COMPANY deems necessary or appropriate, in its sole discretion, or as may be required under the regulations or directives of the Nuclear Regulatory Commission or such other regulatory agencies having jurisdiction, with respect to the construction, acquisition and completion of CR-3 for commercial service, the procurement, replacement, modification or renewal of all or any part thereof, and if necessary, the retirement, disposal or salvaging of all or any part thereof, whether before or after completion;

(ii) Except as provided in Section 5(1), and Section 5(m), the execution and filing with the Nuclear Regulatory Commission or such other regulatory agency having jurisdiction of applications, amendments, reports and other documents and filings in or in connection with licensing and other regulatory matters with respect to CR-3.

(iii) The receipt on PARTICIPANT'S behalf of any notice or other communication from the Nuclear Regulatory Commission or other regulatory agency having jurisdiction, as to any licensing or other regulatory matter with respect to CR-3.

In discharging its obligations hereunder, the COMPANY shall have the right, on its own behalf and on behalf of PARTICIPANTS, to contract with itself for the purchase of any equipment or facilities or the performance of services in connection with CR-3. The COMPANY shall have no liability to PARTICIPANTS for any loss, damage or expense suffered by PARTICIPANTS or for any

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damage to PARTICIPANT'S interest in CR-3 or any portion of CR-3 arising out of or resulting from any action taken or failed to be taken by the COMPANY or any employee of the COMPANY pursuant to this Section 5(b) unless such loss, damage or expense results from the willful misconduct of the COMPANY or the failure of the COMPANY to perform any obligation imposed pursuant to Section 5(b) above, including without limitation, the failure of the COMPANY to plan, license, construct, acquire, complete, maintain, operate and dispose of CR-3 in a prudent manner in accordance with good utility practice. In the event the COMPANY performance of its duties pursuant to this Section 5(b) incurs any liability to any third party, any amount paid by the COMPANY on account of such liability shall be considered a Cost of Construction and apportioned between the parties pursuant to Section 1(e) hereof.

(c) Information. The COMPANY shall make all reasonable effort to inform the PARTICIPANTS as to planning for and progress of construction, acquisition and completion of CR-3.

(d) Operating Conditions.

(i) Authority for Operation and Management. The COMPANY shall have sole authority to manage, control, maintain, and operate CR-3, and shall take all steps which it deems necessary or appropriate for that purpose. The PARTICIPANTS irrevocably authorize the COMPANY to act as their agent in all activities associated with the operation and management of CR-3.

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As the sole manager and predominant owner of CR-3, the COMPANY will manage, control, maintain, and operate CR-3 in all respects as if the COMPANY were the sole owner of CR-3. In discharging its obligations hereunder, the COMPANY shall have the right, on its own behalf and on behalf of the PARTICIPANTS, to contract with itself or any outside contractor for the purchase of any equipment or facilities, or the performance of services in connection with CR-3.

(ii) Scheduling and Dispatching

The COMPANY shall have sole authority for the hourly scheduling and dispatching of CR-3 generation, in accordance with COMPANY's scheduling and dispatching practice.

(iii) Energy Entitlements

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The COMPANY and the PARTICIPANTS shall be entitled to 90% and 10%, respectively, of the net energy output of CR-3 as measured on the low side of the main generator step-up transformer and adjusted for appropriate step-up and station service transformer losses. Point of Delivery for PARTICIPANTS shall be the high side of the step-up transformer. The determination of actual entitlements will be made monthly after the fact. Differences between actual KWH's received and KWH's entitlement will be carried as Inadvertent with every attempt being made to correct monthly. PARTICIPANT'S Generation Entitlement Share shall commence with commercial operation of CR-3.

Where it is the PARTICIPANT'S responsibility to control hourly net interchange between the COMPANY, or another intermediate transmission system entity, such PARTICIPANT(S) shall make every effort to stay within $\pm 5\%$ of its hourly entitlement. Should conditions dictate that hourly entitlements be greater or lesser than what would be normally expected, system dispatchers of PARTICIPANTS will be duly notified.

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The COMPANY shall maintain and perform annual meter tests of the KWH meters used to determine the net generation of CR-3. All PARTICIPANTS shall have witness rights to such tests. Any PARTICIPANT may request more frequent testing than outlined herein, however, it will be financial responsibility of

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that PARTICIPANT to bear all costs associated with such tests.

(iv) Operations Management

The COMPANY, as sole manager of CR-3, shall take all steps which it deems necessary or appropriate for that purpose in a manner consistent with prudent practices in the electric utility industry. The COMPANY shall: Execute, administer, perform and enforce contracts acting as principal on its own behalf and as agent for all of the other PARTICIPANTS, for operating work, including, without limitation, any and all warranties on equipment, facilities, materials and services furnished pursuant to any such contracts. Administer, perform and enforce any Nuclear Fuel Agreements and negotiate, execute, administer, perform and enforce all other Nuclear Fuel Agreements. Administer, perform and enforce all other contractual obligations and arrangements, including all warranties applicable thereto entered prior to the date hereof. Furnish or recruit the necessary personnel and provide for such training as may be required to qualify them to perform the operating work and to meet all licensing requirements established by law. Comply with (1) any and all laws applicable to the performance of operating work and capital improvements for CR-3, including without limitation all applicable laws, rules and regulations for protection of the environment and all applicable provisions of any workmen's compensation laws, and (2) the terms and conditions of any contract, permit or license relating to CR-3. Purchase and procure, through and from any source it may select, in the name of the PARTICIPANTS with undivided interests as tenants in common in accordance with their Generation Entitlement Shares, the equipment, apparatus, machinery, tools, services, materials and supplies and emergency spare parts necessary for the performance of operating work and the addition of capital improvements. Expend funds in accordance with the terms and conditions of this participation agreement. Keep and maintain such records of monies received

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and expended, obligations incurred, credits accrued, the conduct of operating work and making capital improvements, and of contracts entered into in the performance of operating work as may be necessary or useful in carrying out project agreements or required to permit an audit of the operating work and capital improvements, relating to CR-3, and make such records available for inspection. Not permit any liens to remain in effect unsatisfied against CR-3 (other than the liens permitted under this Agreement, liens for taxes and assessments not yet delinquent, liens for labor and material not yet perfected or undetermined charges or liens incidental to the performance of the operating work). Arrange for the placement and maintenance of operating insurance. Assist any insurer in the investigation, adjustment and settlement of any loss or claim covered by operating insurance. Present and prosecute claims against insurers and indemnitors providing operating insurance or indemnities in respect of any loss of or damage to any property, of CR-3 or liability of any PARTICIPANT to third parties covered by any indemnity agreement, and to the extent that such loss, damage or liability is not covered by operating insurance or by any indemnity agreement, present and prosecute claims therefor against any parties who may be liable therefor. Investigate, adjust, defend and settle claims against any or all PARTICIPANTS arising out of or attributable to operating work or capital improvements, or the past or future performance or non-performance of the obligations and duties of any PARTICIPANT, under or pursuant to this participation agreement, including but not limited to any claim resulting from death or injury to persons or damage to property, when said claims are not covered by valid and collectible operating insurance carried

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by any PARTICIPANT, and whenever and to the extent reasonable, present and prosecute claim against any third party, including insurers, for any costs, losses and damages incurred in connection with said claims. Notice to the Administrative Committee shall be given by the COMPANY before any said claim or combination of said claims against any or all PARTICIPANTS arising out of the same transaction or incident is settled for more than \$250,000 unless the entire amount of the settlement in excess of \$250,000 is recoverable from an insurer providing operating insurance. Keep the PARTICIPANTS advised of major changes in conditions or other material developments affecting the performance of operating work, any known default of the project agreements and submit to the PARTICIPANTS any recommendations for amendments of this Agreement. In the event of an operating curtailment or emergency take such action as the COMPANY in its sole discretion may deem prudent or necessary to terminate the operating curtailment or emergency, to preserve and maintain the safety, integrity and operability of CR-3,

to protect the health and safety of the public or to minimize any adverse environmental effects and such other action as required by Exhibit ___ attached hereto.

(v) The other PARTICIPANTS shall lend and be properly reimbursed for all necessary and available assistance as may be requested by the COMPANY in the performance of operating work.

(vi) CR-3 - OPERATING EXPENSES

Operating Expenses of CR-3 will include all the COMPANY costs incurred at CR-3, including amortization of Nuclear Fuel Investment as provided under Account 518 of the Uniform System of Accounts and appropriate allocations of the COMPANY costs for Production Supervision, Insurance and Liability Payments and Employee Benefits (including Payroll taxes.)

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(vii) SHARING OF COSTS

It is the absolute intent of the COMPANY and all PARTICIPANTS to share all items of cost, obligation and liability incurred in connection with CP-3 (other than financing) in proportion to their Generation Entitlement Shares. In addition to the costs listed above, under "Operating Expenses", the costs to be shared will be increased ____% to cover unallocated costs for Dispatching and Load Control, Overheads, such as Administrative and General Expenses, special billing and accounting, organization, expertise, risks and management. Payment of these charges and those for Common and External Facilities provided in Section _____ is due in advance. However, to facilitate billing and payment, the monthly charges for the cash portion (total charges less amortization of fuel expense), will be invoiced by the 15th with payment due by the 25th of the next succeeding month, and a financing charge of 1/8 of 1.15 times current annual Prime Rate (as defined) times the amount due will be added and also be due with the above cash payment. These costs shall be paid by the PARTICIPANTS when an invoice is presented and payment is to be made payable to Treasurer: Florida Power Corporation, P. O. Box 14042, St. Petersburg, Florida 33733. Payments are also subject to the requirements of Section 9.

At the request of either the COMPANY or PARTICIPANTS an adjustment or readjustment of the percentage for unallocated costs may be determined as agreed upon among the COMPANY and the PARTICIPANTS. If agreement is not reached, the percentage shall be changed by the same amount as (insert some acceptable national index).

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(f) Cooperation.

The COMPANY and PARTICIPANTS will cooperate with each other in all activities relating to CR-3, including, without limitation, the filing of applications for authorizations, permits or licenses and the execution of such other documents as may be reasonably necessary to carry out the provisions of this Agreement. Without the COMPANY'S written consent, PARTICIPANTS shall not incur any obligation which would or could obligate the COMPANY to any third party.

(g) Alienation and Assignment.

During the existence of this contract, neither the COMPANY nor PARTICIPANTS shall have the right to sell, lease, convey, transfer, assign or alienate in any manner whatsoever its ownership interest, or any portion or portions thereof, in CR-3, or any rights under this Agreement without first offering, subject to all requisite regulatory approval, such sale, lease or other conveyance to the other parties to this Agreement upon the same terms and conditions as the proposed sale, lease or conveyance to a third party, which offer shall be made in the form of a proposed contract and shall be open for acceptance by the parties to this Agreement for a period of thirty days, and in the event such offer is accepted, the affected parties shall proceed to a closing pursuant to the terms of the aforesaid contract in an expeditious manner; provided,

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however, the COMPANY and PARTICIPANTS shall each have the right to convey a security interest in its proportionate interest in CR-3 to secure bonds or other obligations issued or to be issued. In the event such offer is not accepted by the other parties to this Agreement within the aforesaid thirty-day period and the offering party does not consummate a sale, lease or other conveyance of such interest within a period of one year after the date of its offer to the parties to this Agreement, no such sale, lease or other conveyance may be consummated without re-offering the sale, lease or conveyance to such other parties to this Agreement. In no event shall the offering party sell, lease or convey such interest to any third party on more favorable terms than those set forth in the aforesaid contract. The COMPANY and PARTICIPANTS shall notify the other in writing as soon as possible after it learns that any lien or security interest (which lien or security interest in the case of the COMPANY only is in respect of an obligation or liability in excess of \$50,000) has been or will be imposed upon its ownership interest in CR-3 or has reason to believe that such a lien or security interest will be imposed. In the event of any sale, conveyance transfer, assignment, or alienation (other than solely as security for an indebtedness) by the COMPANY or PARTICIPANTS of its ownership interest, or any portion or portions thereof, in CR-3, the COMPANY or PARTICIPANTS, as the case may be, shall cause such transferee to become a party to this Agreement and assume the obligations of the transferor hereunder. Notwithstanding the foregoing provisions of this Section 5(g), the COMPANY shall have the right to sell, convey, transfer or assign its ownership interest, or any portion or portions thereof, in CR-3 to any Entity

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or to any governmental or political subdivision in connection with the financing of pollution control facilities without the consent of PARTICIPANTS and without complying with the foregoing provisions of this Section 5(g).

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(h) Taxes.

(i) The PARTICIPANTS shall use their best efforts to have any taxing or other authority levying any taxes or assessments, or payments in lieu thereof, or making any valuations for the purpose of levying any taxes or assessments or payments in lieu thereof, on CR-3, or any interest or rights therein, assess and levy such taxes or assessments or payments in lieu thereof (except Payroll and Sales and Use Taxes) directly against the ownership or beneficial interest of the COMPANY on each PARTICIPANT.

(ii) All taxes or assessments or payments in lieu thereof levied against the COMPANY or each PARTICIPANT'S ownership or beneficial interest in CR-3, excepting those taxes or assessments or payments in lieu thereof levied against an individual PARTICIPANT in behalf of any or all of the other PARTICIPANTS, shall be the sole responsibility of the PARTICIPANT upon whose ownership or beneficial interest said taxes or assessments or payments in lieu thereof are levied.

(iii) If any property taxes or payments in lieu thereof or any other taxes or assessments are levied or assessed in a manner other than specified in Section (h) (i) hereof, COMPANY and PARTICIPANTS shall establish equitable practices and procedures for the apportionment among the COMPANY and PARTICIPANTS of such taxes and assessments or payments in lieu thereof. Sales and Use taxes will be charged as part of the cost of the material or service taxed.

(iv) Responsibility for payment of nineteen hundred seventy-five ad valorem taxes shall be determined between the COMPANY and PARTICIPANTS at the Closing based upon their respective interest in CR-3. PARTICIPANTS shall be responsible for all sales and transfer taxes and recording fees incurred in connection with the conveyance to PARTICIPANTS of an undivided interest in CR-3 pursuant to this Agreement.

(i) Insurance. The COMPANY shall maintain in force for the benefit of the COMPANY and PARTICIPANTS as their interest shall appear, as a cost of construction or a cost of operation as appropriate, such insurance as deemed necessary by the COMPANY, but not less than will satisfy the requirements of the Atomic Energy Act of 1954, as amended, and conform with the prudent utility practices. The COMPANY shall keep the PARTICIPANTS informed as to the status of insurance in force and if it does so, the COMPANY shall not be liable for any failure to insure or inadequacy of coverage.

(j) Nuclear Fuel. The wording of the Nuclear Fuel sections will be established in accordance with the following general principles:

(i) Investments in Nuclear Fuel will be made considerably in advance of its use. Some elements affecting Fuel Expense may not be known until several years after the related Nuclear Fuel is used and the Federal Power Commission System of Accounts imposes certain requirements respecting Nuclear Fuel Accounting.

(ii) The COMPANY shall have final authority and responsibility to manage all CR-3 Nuclear Fuel according to its discretion and judgment.

(iii) The COMPANY shall also have the right to enter into any arrangement, on its own behalf and on behalf of PARTICIPANTS, for the purchase or financing of Nuclear Fuel for CR-3, including without limitation the leasing thereof which the Company, at its sole discretion, shall deem desirable and PARTICIPANTS agree to cooperate with the COMPANY to take all action required to consummate such arrangements.

(iv) PARTICIPANTS have the right to mortgage pledge or encumber their investment in Nuclear Fuel.

(v) Investment in and later amortization of Nuclear Fuel includes all costs, except AFC, as recorded in Accounts 120 or Amortization Account 518.

(vi) Payments shall be made in advance in order for the COMPANY to meet payment schedules under Nuclear Fuel Agreements for investments in fuel. All costs will be shared on the basis of Generation Entitlement shares with the result that the remaining investment in fuel inventories will be in proportion to Generation Entitlement shares.

(k) Pollution Control Facilities. The COMPANY shall have the right to enter into any arrangement, solely on its own behalf or on behalf of both itself and PARTICIPANTS, for the purpose of financing certain facilities and equipment located at CR-3 for the control of environmental pollution through the issuance of bonds or similar securities through any political subdivision, the interest on which may be exempt from Federal income taxes. PARTICIPANTS agree to cooperate with the COMPANY and to take all action required to consummate any such financing of pollution control facilities and equipment.

(l) Approvals. The COMPANY and PARTICIPANTS shall use their best efforts to obtain as quickly as possible all requisite governmental, regulatory and vendor approvals of the consummation of the transactions contemplated hereby.

(m) Licenses. PARTICIPANTS, at its own expense, with informational assistance provided by the COMPANY, will seek to and become, prior, to the Closing, a licensee of the Nuclear Regulatory Commission or such other regulatory agencies having jurisdiction over the licensing of CR-3.

SECTION 6. Conditions Precedent to the COMPANY'S Obligations Hereunder. All obligations of the COMPANY under this Agreement are subject to the fulfillment, prior to or at the Closing, of each of the following conditions (or the waiver in writing of such conditions by the COMPANY):

(a) The COMPANY shall not have discovered any material error, misstatement or omission in the representations and warranties made by PARTICIPANTS in this Agreement.

(b) PARTICIPANTS representations and warranties contained in this Agreement shall be deemed to have been made again at and as of the time of the Closing and shall then be true in all material respects; PARTICIPANTS shall have

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performed and complied with all agreements, covenants and conditions required by this Agreement to be performed or complied with by it prior to or at the Closing; the COMPANY shall have been furnished with a certificate signed by the Principal Officer of each PARTICIPANT, dated the date of the Closing, certifying in such detail as the COMPANY may request to the fulfillment of the foregoing conditions.

(c) Evidence that the purchase money required of each PARTICIPANT has been wired in Federal funds to the account of the COMPANY at Morgan Guaranty Trust Company, 23 Wall Street, New York, New York, Account Number 021-44388, on or before July 15, 1975.

SECTION 7. Conditions Precedent of PARTICIPANT'S Obligations Hereunder. All obligations of PARTICIPANTS under this Agreement are subject to the fulfillment, prior to or at the Closing, of each of the following conditions (or the waiver in writing of such conditions by PARTICIPANTS):

(a) PARTICIPANTS shall not have discovered any material error, misstatement or omission in the representations and warranties made by the COMPANY in this Agreement.

(b) The COMPANY'S representations and warranties contained in this Agreement shall be deemed to have been made again at and as of the time of the Closing and shall then be true in all material respect; the COMPANY shall have performed and complied with all agreements, covenants and conditions required by this Agreement to be performed or complied with by it prior to or at the Closing and PARTICIPANTS shall have been furnished with a certificate of the President or a Vice President of the COMPANY, dated the date of the Closing, certifying in such detail as PARTICIPANTS may request to the fulfillment of the foregoing conditions.

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SECTION 8. Conditions Precedent to the Respective Obligations of the COMPANY and PARTICIPANTS. The respective obligations of the COMPANY and PARTICIPANTS hereunder are, unless waived in writing by the COMPANY and PARTICIPANTS prior to or at the Closing, subject to the further conditions that:

(a) All requisite governmental, regulatory and vendor approvals of the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby the COMPANY and PARTICIPANTS and the release by Morgan Guaranty Trust Company as Trustee under the COMPANY'S First Mortgage Bond Indenture dated January 1, 1944, of the interest in CR-3 to be conveyed to PARTICIPANTS hereunder from the lien of such Indenture, shall have been received including other approvals on the part of any PARTICIPANTS which approvals may not be waived.

SECTION 9. NONPARTITIONMENT. Each PARTICIPANT and COMPANY hereby waives any rights which it may have to partition any component of CR-3 or Common Facilities or External Facilities, whether by partitionment in kind or by sale and division of the proceeds, and further agrees that it will not resort to any action in law or in equity to partition such component or Common Facilities or External Facilities, and it waives the benefits of all laws that may now or hereafter authorize such partition for a term (i) which shall be conterminous with this Agreement, or (ii) which shall be for such lesser period as may be required under applicable law.

SECTION 10. NONDEDICATION OF FACILITIES. The PARTICIPANTS and COMPANY do not intend to dedicate and nothing in this Participation Agreement shall be construed as constituting a dedication by COMPANY or any PARTICIPANT of its properties or facilities, or any part thereof, to any other PARTICIPANT, to the COMPANY, the public, or the customers of any PARTICIPANT or COMPANY.

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manpower budget, annual operation and maintenance budget, planned outages, written statistical and administrative reports, written budgets, and information and other similar records and the form thereof to be kept and furnished by the COMPANY (excluding accounting records used internally by the COMPANY for the purpose of accumulating financial and statistical data, such as books of original entry, ledgers, work papers and source documents).

(vi) Coordinate audit requests by PARTICIPANTS and the selection of an auditor to review the books or records of the COMPANY, relevant to CR-3, as may be needed by PARTICIPANTS. It is recognized that as the COMPANY is constantly audited by representatives of various governmental and regulatory agencies as well as independent auditors who certify to the correctness of the COMPANY'S accounting records, requests for special audits for the benefit of PARTICIPANTS shall be paid for by those requesting such audits.

(c) Within thirty (30) days after the execution of this Participation Agreement the COMPANY and each PARTICIPANT shall designate its representative on the Administrative Committee hereby established, with notice thereof given to the COMPANY and the PARTICIPANTS.

(d) Any action or determination of the Administrative Committee must be unanimous, including the vote of the Chairman, subject to provisions herein with respect to procedures of default and arbitration.

(e) The Administrative Committee shall keep written records of all meetings.

(f) If the Administrative Committee fails to reach agreement while performing the respective functions and duties assigned to it in this Agreement, then such disagreement shall be referred to higher authority within the organiza-

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SECTION 11. ADMINISTRATION. As a means of securing effective cooperation and interchange of information and of providing consultation on a prompt and orderly basis among the PARTICIPANTS and the COMPANY in connection with various administrative and technical matters which may arise from time to time in connection with the terms and conditions of this Agreement, an Advisory Administrative Committee is established which shall have the functions and responsibilities and be constituted as described herein.

(a) Membership. The Administrative Committee shall have as its Chairman an appointee representing the COMPANY, who shall be responsible for calling meetings and establishing agendas. Each participant may, at its option, have an individually appointed member or may delegate a member to represent two or more participants.

(b) Functions. The Administrative Committee shall have the following functions, among others:

(i) Provide liaison among all PARTICIPANTS and the COMPANY at the management level.

(ii) Appoint Ad Hoc Committees as necessary to perform detailed work and conduct studies regarding matters requiring investigation.

(iii) Perform such other functions and duties as may be assigned to it in this Agreement.

(iv) Review and discuss disputes arising under this Agreement.

(v) Provide liaison among all PARTICIPANTS and the COMPANY with respect to the financial and accounting aspects of progress, performance and completion of construction and operation of CR-3. These shall include such items as: capital improvements, annual capital expenditures budget, annual

tion of the COMPANY and each PARTICIPANT for resolution. If, after thirty (30) days the disagreement is not resolved by such higher authorities, then the matter may proceed to arbitration as provided in Section 14 hereof.

(g) If a dispute should arise which is not resolved by the Administrative Committee or the higher authorities within the COMPANY and PARTICIPANTS' organizations, then, pending the resolution of the dispute by arbitration,

COMPANY shall proceed with Construction Work, Operating Work or Capital Improvements in a manner consistent with this Agreement and prudent practice in the electric utility industry, and the PARTICIPANTS shall advance the funds required to perform such Construction Work, Operating Work or Capital Improvements in accordance with the applicable provisions of this Agreement.

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Amounts advanced by the

PARTICIPANTS pursuant to this Section 11(g) during the pendency of such dispute shall not be subject to refund except upon a final determination that the expenditures were made in a manner inconsistent with this Agreement and prudent practice in the electric utility industry.

(h) The COMPANY and each PARTICIPANT shall notify the others promptly of any change in the designation of its representatives on the committees. In the absence of the representative, any alternate appearing at a committee meeting shall be deemed to have authority to act on behalf of the organization he represents unless the committee chairman is furnished with written notice to the contrary.

(i) Any expenses incurred by any member of the Administrative Committee, or ad hoc committees, and all expenses incurred by any employee or agent of the COMPANY or any PARTICIPANT assisting such committee member, in connection with his duties on such committee shall be paid and borne by the organization which he represents and shall not be included in Construction Costs or in costs for Operating Work.

12. COMMON FACILITIES. The COMPANY, as the sole owner of all Common Facilities solely responsible for their operation and maintenance, including the making of any replacements, substitutions, additions, improvements or betterments thereof, agrees to the following terms and conditions:

(a) COMPANY shall operate and maintain the Common Facilities in a manner consistent with generally accepted practices in the electric utility industry. Any dispute between COMPANY and any PARTICIPANT in respect of the operation and maintenance of the Common Facilities shall be subject to resolution in the manner provided by Section 11.

(b) The PARTICIPANTS shall pay to COMPANY a share of the operation and maintenance expenses of the Common Facilities not otherwise allocated to CR-3, which share shall be equal to the percentage (hereinafter the "CR-3 Percentage") computed by dividing the turbine Nameplate Capability of CR-3 by the sum of (i) such Turbine Nameplate Capability of CR-3, and (ii) the Turbine Nameplate Capability for CR-1 and CR-2. The CR-3 percentage as calculated, utilizing the above procedure, is 50.34%.

(c) The PARTICIPANTS shall pay to COMPANY a monthly use charge for the Common facilities in an amount equal to one-twelfth of the product of the CR-3 Percentage, the original cost of the Common Facilities, and the applicable fixed charge rate as shown in Exhibit __.

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(d) COMPANY, as the sole owner of all External Facilities solely responsible for their operation and maintenance, including the making of any replacements, substitutions, additions, improvements or betterments thereof, agree to the following terms and conditions:

(i) COMPANY shall operate and maintain the External Facilities in a manner consistent with generally accepted practices in the electric utility industry. Any dispute between COMPANY and any PARTICIPANT in respect of the operation and maintenance of the External Facilities shall be subject to resolution in the manner provided by Section 11 hereof.

(ii) Each PARTICIPANT shall pay to COMPANY a share of the operation and maintenance expenses of the External Facilities not otherwise allocated to CR-3, which share shall be equal to its percentage of ownership in CR-3.

(iii) The PARTICIPANTS shall pay to COMPANY a monthly use charge for the External Facilities in an amount equal to one-twelfth of the product of the original cost of the External Facilities, and the applicable fixed charge rate as shown in Exhibit ___.

(e) At the request of the COMPANY or any PARTICIPANT, the Administrative Committee shall determine whether or not an adjustment or readjustment of any percentage used in computing the monthly use charge is warranted, provided, however, such determination shall not be requested at intervals shorter than two years without the written consent of COMPANY and all of the PARTICIPANTS.

(f) COMPANY shall bill the PARTICIPANTS monthly for the monthly use charges payable under Sections 12(c) and 12(d)(iii) hereof, in accordance with the provisions in Section 5(d)(vii).

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13. DEFAULTS AND NON-PAYMENT

In this Section 13,

the term PARTICIPANTS or PARTICIPANT shall include the COMPANY.

(a) Each PARTICIPANT hereby agrees that it shall pay all monies and carry out all other duties and obligations agreed to be paid and/or performed by it pursuant to all of the terms and conditions set forth and contained in this

Agreement, and a default by any PARTICIPANT in the covenants and obligations to be kept and performed pursuant to the terms and conditions set forth and contained herein shall be an act of default.

(b) In the event of a default by any PARTICIPANT in any of the terms and conditions of this Agreement, then, within ten (10) days after written notice has been given by any non-defaulting PARTICIPANT to all other PARTICIPANTS of the existence and nature of the default, the non-defaulting PARTICIPANTS shall remedy such default either by advancing the necessary funds and/or commencing to render the necessary performance, with each non-defaulting PARTICIPANT contributing to such remedy in the ratio of its Generation Entitlement Share to the total of the Generation Entitlement Shares of all non-defaulting PARTICIPANTS.

(c) In the event of a default by any PARTICIPANT in any of the terms and conditions of this Agreement and the giving of notice by any non-defaulting PARTICIPANTS as provided in Section 13(b) hereof, the defaulting PARTICIPANT shall take all steps necessary to cure such default as promptly and completely as possible and shall pay promptly upon demand to each non-defaulting PARTICIPANT the total amount of money and/or the reasonable equivalent in money or non-monetary performance, if any, paid and/or made by such non-defaulting PARTICIPANT in order to cure any default by the defaulting PARTICIPANT, together with interest on such money and/or the costs of non-monetary performance at an annual rate equal to 1.30 times Prime Rate (Prime Rate to be defined in Definition Section) at the time of default,

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from the date of the expenditure of such money and/or the date of completion of such non-monetary performance by each such non-defaulting PARTICIPANT to the date of such reimbursement by the defaulting PARTICIPANT, or such greater amount as may be otherwise provided in this Agreement .

(d) In the event that any PARTICIPANT shall dispute the existence or nature of a default asserted against it in a notice given pursuant to Section 13(b), then such PARTICIPANT shall pay the disputed payment or perform the disputed obligation, but may do so under protest. The protest shall be in writing, shall accompany the disputed payment or precede the performance of the disputed obligation, and shall specify the reasons upon which the protest is based. Copies of such protest shall be mailed by such PARTICIPANT to all other PARTICIPANTS. Payments not made under protest shall be deemed to be correct, except to the extent that periodic or annual audits may reveal over or under payments by PARTICIPANTS, necessitating adjustments. In the event it is determined by arbitration, pursuant to the provisions of this Participation Agreement or otherwise, that a protesting PARTICIPANT is entitled to a refund of all or any portion of a disputed payment or payments or is entitled to the reasonable equivalent in money of non-monetary performance of a disputed obligation theretofore made, then, upon such determination, the non-protesting PARTICIPANTS shall pay such amount to the protesting PARTICIPANT, together with interest thereon at the annual rate of the Prime Rate at time of protested payment, from the date of payment or from the date of completion of performance of a disputed obligation to the date of reimbursement. Reimbursement of the amount so paid shall be made by the non-protesting PARTICIPANTS in the ratio of their respective Generation Entitlement Shares to the total of the Generation Entitlement Shares of all non-protesting PARTICIPANTS.

(e) Unless otherwise determined by a board of arbitrators, in the event a default by any PARTICIPANT in the payment or performance of any obligation

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under this Agreement shall continue for a period of six (6) months or more without having been cured by the defaulting PARTICIPANT or without such PARTICIPANT having commenced or continued action in good faith to cure such default, or in the event the question of whether an act of default exists becomes the subject of an arbitration pursuant to Section 14 hereof, and such act continues for a period of six (6) months following a final determination by a board of arbitrators or otherwise that an act of default exists and the defaulting PARTICIPANT has failed to cure such default or to commence such action during said six (6) month period, then, at any time thereafter and while said default is continuing, all of the non-defaulting PARTICIPANTS, by written notice to all PARTICIPANTS, may suspend the right of the defaulting PARTICIPANT to be represented on and participate in the actions of all committees and to receive all or any part of its proportionate share of the Available Generating Capability and Net Energy in which event:

(i) During the period that such suspension is in effect, the non-defaulting PARTICIPANTS shall bear all of the operation and maintenance costs, insurance costs and other expenses, including Fuel Expenses and Nuclear Fuel Expenditure otherwise payable by the defaulting PARTICIPANT under this Agreement and shall be entitled to schedule and receive for their respective accounts the Generation Entitlement Share of the defaulting PARTICIPANT of the Available Generating Capability and Net Energy Generation in the ratio of their respective Generation Entitlement Shares to the total of the Generation Entitlement Shares of all non-defaulting PARTICIPANTS.

(ii) A defaulting PARTICIPANT shall be liable to the non-defaulting PARTICIPANTS in the proportion that the Generation Entitlement Shares of each non-defaulting PARTICIPANT bears to the total of the Generation Entitlement Shares of all non-defaulting PARTICIPANTS for all costs incurred by such non-defaulting PARTICIPANTS

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pursuant to Section 13(e)(i) hereof. The proceeds paid by any defaulting PARTICIPANT to remedy any such default shall be distributed to the non-defaulting PARTICIPANTS in the ratio of their respective Generation Entitlement Shares to the total of the Generation Entitlement Shares of all non-defaulting PARTICIPANTS.

(iii) The suspension of any defaulting PARTICIPANT shall be terminated and its full rights hereunder restored when all of its defaults have been cured and all costs incurred by non-defaulting PARTICIPANTS pursuant to Section 13(e)(i) have been paid by the defaulting PARTICIPANT or other arrangements suitable to all non-defaulting PARTICIPANTS have been made.

(iv) During the period that such suspension is in effect, no fuel expense credit adjustments shall be made to which the defaulting PARTICIPANT would have been entitled in the absence of such suspension. The non-defaulting PARTICIPANTS may apply all or any portion of any such credit adjustments as offsets to costs and expenses incurred by them and arising from or in connection with such default.

(f) In addition to the remedies provided for in Section 13(e) hereof the non-defaulting PARTICIPANTS may, in submitting a dispute to arbitration in accordance with the provision of Section 14 hereof, request that the board of arbitrators determine what additional remedies may be reasonably necessary or required under the circumstances which give rise to the dispute. The board of arbitrators may determine what remedies are necessary or required in the premises, including but not limited to the conditions under which CR-3 may be operated economically and efficiently during periods when the defaulting PARTICIPANT'S right to receive its proportionate share of the Available Generating Capability is suspended.

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14. ARBITRATION. In this Section 14, the term 'PARTICIPANT or PARTICIPANTS shall include the COMPANY.

(a) If an arbitrable dispute between any of the PARTICIPANTS should arise under this Agreement, any PARTICIPANT(S) may call for submission of the dispute to arbitration which shall be binding upon all of the other PARTICIPANTS.

(b) The PARTICIPANT(S) calling for arbitration shall give written notice to all other PARTICIPANTS, setting forth in such notice in adequate detail the nature of the dispute, the amount or amounts, if any, involved in such dispute, and the remedy sought by such arbitration proceedings, and, within twenty (20) days from receipt of such notice, any other PARTICIPANT(S) involved may, by written response to the first PARTICIPANT(S) and all other PARTICIPANTS, submit its or their own statement of the matter at issue and set forth in adequate detail additional related matters or issues to be arbitrated. Thereafter, the PARTICIPANT(S) first submitting its or their notice of the matter at issue shall have ten (10) days in which to submit a written rebuttal statement, copies of which shall be given to all other PARTICIPANTS.

(c) Within forty (40) days following delivery of the written notice pursuant to Section 14(b) hereof, the PARTICIPANTS, acting through their representatives on the Administrative Committee, shall meet for the purpose of selecting arbitrators. Both sides of the dispute shall each designate an equal number of arbitrators. The arbitrators so selected shall meet within twenty (20) days following their selection and shall select additional arbitrators, the number of which shall be one (1) less than the total number of arbitrators selected by the PARTICIPANTS. If the arbitrators selected by the PARTICIPANTS, as herein provided, shall fail to select such additional ARBITRATOR(S) within said twenty (20) day period, then the arbitrators shall request from the

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American Arbitration Association (or a similar organization—if the American Arbitration Association should not at the time exist) a list of arbitrators who are qualified and eligible to serve as hereinafter provided. The arbitrators selected by the PARTICIPANTS shall take turns striking names from the list of arbitrators furnished by the American Arbitration Association, and the last name(s) remaining on said list shall be the additional arbitrator(s). All arbitrators shall be persons skilled and experienced in the field which gives rise to the dispute, and no person shall be eligible for appointment as an arbitrator who is an officer or employee of any of the parties to the dispute or is otherwise interested in the matter to be arbitrated.

(d) Except as otherwise provided in this Section 14, the arbitration shall be governed by the rules and practice of the American Arbitration Association (or the rules and practice of a similar organization if the American Arbitration Association should not at that time exist) from time to time in force, except that if such rules and practice, as modified herein, shall conflict with state or Federal law, as the case may be, then in force which are specifically applicable to such arbitration proceedings, such law shall govern.

(e) Included in the issues which may be submitted to arbitration pursuant to this Section 14 is the issue of whether the right to arbitrate a particular dispute is permitted under this Agreement, except for the list of non-arbitrable issues contained herein.

(f) The arbitrators shall hear evidence submitted by the respective Participants and may call for additional information, which additional information shall be furnished by the PARTICIPANT(S) having such information. The decision of a majority of the arbitrators shall be binding upon all the PARTICIPANTS.

(g) The award of the arbitrators shall contain findings relative to the materiality of the default, the period of time within which the defaulting party must remedy the default or commence remedial action, and the remedies which may be

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exercised by the non-defaulting PARTICIPANTS in the event the default is not remedied within such period of time.

(h) This agreement to arbitrate shall be specifically enforceable, and the award and findings of the arbitrators shall be final and binding upon the PARTICIPANTS to the extent permitted by applicable law. Any award may be filed with the Clerk of any court having jurisdiction over the PARTICIPANTS, or any of them, against whom the award is rendered, and, upon such filing, such award, to the extent permitted by the laws of the jurisdiction in which said award is filed, shall be specifically enforceable or shall form the basis of a declaratory judgment or other similar relief.

(i) The fees and expenses of the arbitrators shall be shared by the PARTICIPANTS equally, unless the decision of the arbitrators shall specify some other apportionment of such fees and expenses. All other expenses and costs of the arbitration shall be borne by the PARTICIPANT incurring the same.

(j) In the event that any PARTICIPANT shall attempt to carry out the provisions herein set forth in regard to arbitration, and such PARTICIPANT shall not be able to obtain a valid and enforceable arbitration decree, such PARTICIPANT shall be entitled to seek legal remedies in the courts having jurisdiction in the premises, and the provisions of this Agreement referring to decision of a board of arbitration, to the extent allowable by law, shall be then deemed applicable to final decisions of such courts.

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(a) Governing Law. The validity, interpretation, and performance of this Agreement and each of its provisions shall be governed by the laws of the State of Florida.

(b) Notice. Any notice, request, consent or other communication permitted or required by this Agreement (including, without limitation, any offer or acceptance pursuant to Section 5(f) hereof) shall be in writing and shall be deemed given when deposited in the United States Mail, first class postage prepaid, and if given to the COMPANY shall be addressed to: Florida Power Corporation, P. O. Box 14042, 3201 34th Street South, St. Petersburg, Florida 33733, Attention: General Counsel, and if given to any or all PARTICIPANTS shall be addressed as indicated in Exhibit __, unless a different officer or address shall have been designated by the respective party by notice in writing.

(c) Section Headings Not to Affect Meaning. The descriptive headings of the various Sections of this Agreement have been inserted for convenience of reference only and shall in no way modify or restrict any of the terms and provisions thereof.

(d) No Partnership. Notwithstanding any provision of this Agreement the COMPANY and PARTICIPANTS do not intend to create hereby any joint venture, partnership, association taxable as a corporation or other entity for the conduct of any business for profit, and contemplate seeking a ruling of the Internal Revenue Service that this Agreement has no such effect. The COMPANY and PARTICIPANT agree to timely take all voluntary action as may be necessary to be excluded from treatment as a partnership under the Internal Revenue Code of 1954, as amended, and, if it should appear that one or more changes to this Agreement would be required in order to obtain the ruling referred to above, the COMPANY and PARTICIPANT agree to negotiate promptly in good faith with respect to such changes.

(e) Time of Essence. Time is of the essence of this Agreement.

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(f) Amendments. This Agreement may be amended by and only by a written instrument duly executed by each of the parties hereto.

(g) Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon the COMPANY and PARTICIPANTS and their respective successors and assigns. Nothing in this Agreement, express or implied, is intended to confer upon any other person any rights or remedies hereunder.

(h) Binding Obligations. All of the respective covenants and obligations of each of the PARTICIPANTS and COMPANY set forth and contained in this Agreement shall bind and shall be and become the respective covenants and obligations of:

- (1) Each PARTICIPANT and COMPANY
- (2) All mortgagees, trustees and secured parties under all present and future mortgages, indentures and deeds of trust, and security agreements which are or may become a lien upon any of the interests of COMPANY or PARTICIPANTS in CR-3; provided, however, that such covenants and obligations shall become binding upon such parties only at the time of taking possession:
- (3) All receivers, assignees for the benefit of creditors, bankruptcy trustees and referees of COMPANY or PARTICIPANTS; and
- (4) All other persons, firms, partnerships or corporations claiming through or under any of the foregoing;

and shall be covenants and obligations running with COMPANY or PARTICIPANTS respective rights, titles and interests in CR-3 and in, to and under this Agreement, and shall be for the benefit of the respective rights, titles and interests of the COMPANY or PARTICIPANTS and their respective successors and assigns, in and to CR-3. It is the specific intention of this provision that all such covenants and obligations shall be binding upon any party which acquires any of the rights, titles and interests of any PARTICIPANT or COMPANY in CR-3 or in, to and under this Agreement and that all of the above-described persons and

groups shall be obligated to use COMPANY or PARTICIPANTS rights, titles and interest in CR-3 and/or in, to or under this Agreement for the purpose of discharging its covenants and obligations under this Agreement. _____

(i) Counterparts. This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

(j) "As Is" Sale. CR-3 is to be sold "as is" and "where is".

The COMPANY makes no representation or warranty whatsoever in this Agreement, express, implied or statutory, including, without limitation, any representation or warranty as to the value, quantity, condition, saleability, obsolescence, merchantability, fitness or suitability for use or working order of any of CR-3, nor does the COMPANY represent or warrant that the use or operation of CR-3 will not violate patent trademark or service mark rights of any third parties. PARTICIPANTS are willing to purchase CR-3 "as is" and "where is" and in accordance with the terms and conditions of this Agreement. Notwithstanding the foregoing, PARTICIPANTS shall have the benefit, in proportion to their interest in CR-3, to all manufacturers' and vendors' warranties and all patent, trademark and service-mark rights running to the COMPANY in connection with CR-3.

(k) Good Utility Practices. The COMPANY and PARTICIPANTS shall discharge any and all obligations under this Agreement in a prudent manner and in accordance with good utility practices.

(l) Equal Opportunity. During the term of this Participation Agreement, the COMPANY agrees to comply with all provisions of the Equal Opportunity clause in Section 202, Paragraphs 1 thru 7 of Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375 of October 13, 1967, relative to equal employment opportunity, and the implementing Rules and Regulations of the Office of Federal Contract Compliance, where applicable.

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SECTION 16 - Term and Termination

(a) This Participation Agreement shall become effective on July 15, 1975, and terminate (1) at the Expiration of 75 years from the date of Execution, or (2) at such time as CR-3 is retired from service, whichever event occurs first.

(b) It shall be the responsibility of the Administrative Committee to work out the specific details for retirement of CR-3, which details shall include the ultimate dispensation of CR-3, and how ownership interests will be dealt with for the purpose of retirement and/or salvage.

(c) COMPANY shall notify the Administrative Committee at such time as COMPANY determines CR-3 will be retired. The Administrative Committee shall then perform its responsibilities under Section 16 (b).

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