

**Form of NERC Responsibility Agreement**

*[Exhibit begins on the following page.]*

**NERC RESPONSIBILITY AGREEMENT**  
**BY AND BETWEEN**  
**FLORIDA POWER & LIGHT COMPANY**  
**AND**  
**CITY OF VERO BEACH, FLORIDA**

**DATED AS OF \_\_\_\_\_, 201[ ]**

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## NERC RESPONSIBILITY AGREEMENT

This **NERC RESPONSIBILITY AGREEMENT** (“**Agreement**”), dated as of [\_\_\_\_], 20[\_\_\_], is by and between **FLORIDA POWER & LIGHT COMPANY**, a Florida corporation (“**FPL**”), and the **CITY OF VERO BEACH, FLORIDA**, a municipal corporation organized and existing under the laws of the state of Florida (the “**Owner**”). FPL and Owner are sometimes collectively referred to herein as the “**Parties**” and individually as a “**Party**.”

### WITNESSETH

**WHEREAS**, the Parties have entered into and are contemporaneously herewith consummating an Asset Purchase and Sale Agreement (the “**APA**”), dated as of [\_\_\_\_], 2013, in connection with FPL’s acquisition of certain assets of the Owner;

**WHEREAS**, pursuant to the APA, the Owner has leased to FPL pursuant to certain “Capital Leases” more specifically described in Exhibit A attached hereto (collectively, the “**Capital Leases**”) certain assets that will be used in the operation of the transmission system of FPL;

**WHEREAS**, the Energy Policy Act of 2005 was signed into law in August 2005, which added a new Section 215 to the Federal Power Act, as amended (the “**FPA**”) giving the Federal Energy Regulatory Commission (“**FERC**”) authority over developing and enforcing reliability standards for the Bulk Power System;

**WHEREAS**, in Docket RM06-16-000, *Mandatory Reliability Standards for the Bulk-Power System*, Order No. 693, 118 FERC ¶ 61,218 (2007) (“**Order No. 693**”), FERC approved various Reliability Standards applicable to users, owners and operators of the Bulk Power System developed by the North American Electric Reliability Corporation (“**NERC**”), the entity certified by FERC as the Electric Reliability Organization (“**ERO**”), and FERC intends to approve additional Reliability Standards;

**WHEREAS**, the NERC, through the Florida Reliability Coordinating Council (“**FRCC**”) Delegation Agreement has delegated authority to the FRCC for the purposes of proposing Reliability Standards to the ERO and enforcing Reliability Standards within the FRCC;

**WHEREAS**, Owner is the Owner of the Facilities (as hereinafter defined) and is registered with the NERC as a Transmission Owner (“**TO**”) and, as such, will be responsible after consummation of the transactions contemplated by the APA for complying with Reliability Standards applicable to a TO which are subject to enforcement by the Compliance Enforcement Authority designated by the NERC;

**WHEREAS**, the Owner wishes to delegate to FPL all of the Owner’s responsibilities as a TO with respect to the Facilities in order to ensure that the Reliability Standards and the applicable responsibilities identified in each Reliability Standard applicable to a TO are satisfied and FPL has agreed to assume such responsibilities; and

**WHEREAS**, in order to ensure that the Reliability Standards and the applicable responsibilities identified in each Reliability Standard are satisfied, and where more than one entity is registered as a user, owner or operator of the Bulk Power System within the same Balancing Authority Area, the FERC in Order No. 693 (¶145) has directed the NERC to assure that there is clarity in identifying responsibilities for, and that there be no gaps or unnecessary redundancies with regard to Parties' compliance with, the requirement of each relevant Reliability Standard.

**NOW, THEREFORE**, in view of the recitals set forth above, which the Parties acknowledge and agree are accurate representations of the facts and are hereby incorporated by reference, FPL and the Owner agree to the terms of this Agreement that sets forth the delegation of tasks and responsibilities of each Party with regard to the applicable Reliability Standards.

## **AGREEMENT**

**1. Definitions.** Unless otherwise defined herein, all capitalized terms shall have the meaning set forth in the FERC-approved NERC Glossary of Terms, the Delegation Agreement, including the Compliance Monitoring and Enforcement Program contained in Exhibit D to the Delegation Agreement, and the NERC Rules of Procedure.

“**APA**” has the meaning set forth in the recitals to this Agreement, and includes any amendments or supplements thereto.

“**Agreement**” has the meaning set forth in the preamble to this Agreement, together with the Exhibit hereto, as the same may be amended from time to time in accordance herewith.

“**Capital Leases**” has the meaning set forth in the recitals to this Agreement, and includes any amendments or supplements thereto.

“**Closing**” has the meaning set forth in the APA.

“**Compliance**” means full performance of the tasks and responsibilities and associated measures required by the Reliability Standards requirements, by the NERC compliance procedures and the Compliance Monitoring and Enforcement Program.

“**Compliance Monitoring and Enforcement Program**” means the NERC Compliance Monitoring and Enforcement Program, Appendix 4C to the NERC Rules of Procedure, to be implemented by the FRCC pursuant to Exhibit D to the Delegation Agreement.

“**Confidential Information**” has the meaning set forth in Section 6(a).

“**Delegation Agreement**” means the Amended and Restated Delegation Agreement, made as of January 1, 2011, between NERC and FRCC, as the same may be amended, and any replacement therefor.

“**Delegated Task**” means a task required to meet a Reliability Standard that the Supporting Entity has been assigned the responsibility to perform under this Agreement.

“**ERO**” has the meaning set forth in the recitals to this Agreement.

“**Facilities**” means the assets leased by the Owner to FPL pursuant to the Capital Leases that are used by FPL in the operation of the Transmission System.

“**FERC**” has the meaning set forth in the recitals to this Agreement.

“**FPA**” has the meaning set forth in the recitals to this Agreement.

“**FPL**” has the meaning set forth in the preamble to this Agreement, and shall include its successors and permitted assigns.

“**FRCC**” has the meaning set forth in the recitals to this Agreement.

“**Owner**” has the meaning set forth in the preamble to this Agreement, and shall include its successors and permitted assigns.

“**Party**” and “**Parties**” have the meanings set forth in the preamble to this Agreement, and shall include its successors and permitted assigns.

“**Penalty**” or “**Penalties**” means any fine, reprimand or monetary or non-monetary penalty issued or assessed by a Compliance Enforcement Authority.

“**Public Document**” has the meaning set forth in Section 6(c).

“**Responsible Entity**” means the Party that is charged with the responsibility for demonstrating Compliance as the registered TO in accordance with the joint registration of FPL and the Owner with a Reliability Standard requirement. The Responsible Entity shall assemble the documentation necessary for demonstrating Compliance.

“**Reliability Standard**” means a requirement approved by the FERC under Section 215 of the FPA to provide for reliable operation of the Bulk Power System. The term includes requirements for the operation of the existing Bulk Power System facilities, including cyber security protection, and the design of planned additions or modifications to such facilities to the extent necessary for the reliable operation of the Bulk Power System; but the term does not include any requirement to enlarge such facilities or to construct new transmission capacity or generation capacity.

“**Supporting Entity**” means the Party that is charged with the responsibility for demonstrating Compliance with a Delegated Task under a Reliability Standard.

“**TO**” has the meaning set forth in the recitals to this Agreement, and includes any entity that succeeds to the ownership of any of the Facilities.

“**Transmission System**” means the transmission system operated by FPL.

## **2. Term; Surviving Obligations.**

(a) Term. This Agreement shall be effective as of the Closing and shall terminate on the earlier of (i) a date upon which the Parties agree in writing to terminate it, (ii) the effective date on which none of the Facilities are in operation as part of the Transmission System, or (iii) the date on which all of the Capital Leases have terminated.

(b) Surviving Obligations. This Agreement shall continue in effect after termination to the extent necessary to complete corrective mitigating actions identified in the Compliance monitoring process as well as satisfy all other obligations including any financial responsibilities. Upon termination of this Agreement, any outstanding financial right or obligation, and any provision of this Agreement necessary to give effect to such right or obligation, shall survive until satisfied.

## **3. Status of Parties; Delegated Tasks; Purpose of Agreement.**

(a) Status of Parties. The Parties acknowledge that FPL as the lessee under the Capital Leases is entitled to the exclusive use and possession of the Facilities and that the Owner's rights are only with respect to the ownership of the Facilities. Although the Owner has been required to register with the NERC as a TO, FPL is also acting as the Transmission Operator with respect to such Facilities and as the Transmission Owner with respect to the other transmission assets interconnected with the Facilities and, as such, has the ability to assume and perform the responsibilities of the Owner as a TO with respect to the Facilities.

(b) Delegated Tasks. The Parties agree that as set forth in ¶145 of Order No. 693, NERC and FRCC Compliance registration criteria, and any other applicable orders, an entity registered with NERC and charged with the performance of a function remains responsible for Compliance with Reliability Standards for that function, even if the performance of certain tasks is delegated to other entities. Thus, the Parties acknowledge and agree that to ensure clarity in identifying, establishing and delegating responsibility for Compliance for the transmission facilities within the Transmission System, it is appropriate for the Owner to delegate to FPL pursuant to this Agreement all of the Compliance responsibilities of the Owner as a TO with respect to the Facilities.

(c) Purpose of Agreement. The Parties agree that the purpose of this Agreement is for the Owner to delegate to FPL, and for FPL to assume, all of the tasks and responsibilities of the Owner as a TO with respect to Compliance for the Facilities within the Transmission System with Reliability Standards pursuant to Order No. 693 applicable to TOs and any other similar orders that may be issued from time to time.

**4. Delegation of Tasks and Responsibilities.** The Owner hereby irrevocably delegates to FPL for the term of this Agreement all of the tasks and responsibilities with regard to each Reliability Standard requirement applicable to the Owner as TO with respect to the Facilities, whether as Responsible Entity or as Supporting Entity and whether now existing or hereafter arising under applicable laws, regulations or rules, and FPL hereby agrees to assume and perform all such tasks and responsibilities from and after the Closing.

**5. Cooperation.**

(a) Cooperation. The Owner agrees to cooperate fully to provide FPL with any and all information and documentation in its possession and assistance requested by FPL that may be necessary for FPL to demonstrate Compliance with the tasks and responsibilities of the Owner as a TO with respect to the Facilities, including, without limitation, any information or documentation in the Owner's possession or assistance required in connection with any audit of FPL of its performance of the tasks and responsibilities of the Owner as a TO with respect to the Facilities that has been delegated to FPL pursuant to this Agreement. Unless otherwise agreed, the Owner agrees that upon fifteen (15) days of receipt of a written notice from FPL requesting the information, the TO shall timely deliver the requested information and documentation. The written notice shall be delivered as set forth in Section 15 of this Agreement.

(b) Support of Appeals Process. If a claim of an Alleged Violation has been made with respect to the tasks and responsibilities of the Owner as a TO that has been delegated to FPL pursuant to this Agreement, the Owner shall provide any assistance and documentation and information in its possession that is necessary to assist FPL to challenge the findings of the Compliance Enforcement Authority and respond to notices of Alleged Violations.

**6. Confidentiality.**

(a) Treatment of Confidential Information. The Parties recognize and agree that for the purposes of demonstrating compliance with the Reliability Standards in preparing a self-certification or responding to a Compliance Audit, spot check, investigation, or inquiry from FERC or the Compliance Enforcement Authority they may receive information from each other that has been marked as "Confidential Information" ("**Confidential Information**"). Except as set forth herein, the Parties agree to keep in confidence and not to copy, disclose, or distribute any such Confidential Information or any part thereof provided for these evidentiary purposes, without the prior written permission of the other Party.

(1) Location of Confidential Information. Confidential Information that the Parties have given to each other in hard copy form that is intended for disclosure to the Compliance Enforcement Authority during the course of a Compliance Audit will be kept in a secure and restricted location separate and apart from the business records of the Party receiving the Confidential Information.

(2) Provision of Confidential Information to Compliance Enforcement Authority. During the course of a Compliance Audit, the Party providing the Confidential Information to the Compliance Enforcement Authority shall notify the other Party if and when the Compliance Enforcement Authority takes physical possession of the Confidential

Information. If the Compliance Enforcement Authority takes physical possession of the Confidential Information, the receiving Party shall be permitted to make one copy of the Confidential Information that will be afforded confidential treatment pursuant to this Agreement. To the extent the Compliance Enforcement Authority does not take physical possession of the Confidential Information, or if a copy has been made of the Confidential Information, the receiving Party shall return the Confidential Information to the providing Party promptly after the conclusion of the Compliance Audit, including the appeal of Alleged Violations or Penalties. The Party providing the other Party's Confidential Information to the Compliance Enforcement Authority has the affirmative duty to request that the Compliance Enforcement Authority treat the Confidential Information as Confidential Information under NERC Rules of Procedure Section 1500.

(b) Disclosure of Confidential Information. If, while in the possession of the receiving Party, disclosure of the Confidential Information is required to respond to a subpoena, law, or other directive of a court, administrative agency, or arbitration panel, except as may be otherwise provided in Section 6(c) (which shall be deemed to control over any contrary provision in this Section 6(b)), the receiving Party hereby agrees to provide the providing Party with prompt written notice of such request or requirement in order to enable the providing Party to (i) seek an appropriate protective order or other remedy, (ii) consult with the receiving Party with respect to taking steps to resist or narrow the scope of such request or legal process, or (iii) waive compliance, in whole or in part, with the terms of this Section. The receiving Party agrees to work with the providing Party to obtain assurance that confidential treatment will be accorded to such Confidential Information and will cooperate to the maximum extent practicable to minimize the disclosure of the Confidential Information consistent with applicable law.

(c) Public Records Law. Notwithstanding any other provision of this Section 6 to the contrary, any document submitted by a Party to the other under this Agreement (“**Public Document**”) will be a public record (as defined in Section 119.011, Florida Statutes) and may be open for inspection or copying by any person or entity except to the extent such document or certain information included in such document is exempted under Chapter 119, Florida Statutes. The Owner may claim that certain information included in one or all of the Public Documents is, or has been treated as, being exempt from disclosure in accordance with Florida law. In the event that the Owner is requested or required by legal or regulatory authority to disclose any Public Document, the Owner shall within three (3) days notify FPL of such request or requirement prior to disclosure so that FPL may seek an appropriate protective order if FPL believes certain information included in such Public Document is exempt from disclosure under Florida law. To the extent reasonably possible and permissible under Florida law, the Owner shall endeavor to provide redacted versions of documents, upon request of FPL if the Owner reasonably agrees with FPL's assertion that certain information included in such Public Document is exempt from public disclosure under Florida law.

(d) Exceptions to Non-Disclosure. Notwithstanding Section 6(a) and Section 6(b) above, each Party to this Agreement shall not have breached any obligation under this Agreement if Confidential Information is disclosed to a third party when the Confidential Information:

(1) was in the public domain at the time of such disclosure or is subsequently made available to the public consistent with the terms of this Agreement;

(2) had been received by either Party at the time of disclosure through other means without restriction on its use, or had been independently developed by either Party as shown through documentation;

(3) is subsequently disclosed to either Party by a third party without restriction on use and without breach of any agreement or legal duty;

(4) subject to the provisions of Section 6(a) and Section 6(b), is used or disclosed pursuant to statutory duty or an order, subpoena or other lawful process issued by a court or other governmental authority of competent jurisdiction; or

(5) is required to be disclosed by the Owner pursuant to, and in compliance with the requirements of, Section 6(c).

(e) Other Parties. Subject to Section 6(d), each Party shall keep Confidential Information in confidence and shall not disclose such information or otherwise make it available, in any form or manner, to any other person or entity other than its employees, without the prior written consent of the other Party. Each Party will cause each of its employees, contractors, sub-contractors, contractors' and sub-contractors' employees and agents who will have access to Confidential Information provided as evidence as described in Section 6(a)(2), if any, to acknowledge that they have read and agree to abide by all terms of this Agreement regarding use and disclosure of Confidential Information.

**7. Default.** A Party shall be in default under this Agreement if such Party fails to perform any obligation required under this Agreement and such failure continues for more than thirty (30) days after written notice, *provided* that if the breach is of such a nature that it cannot be cured within thirty (30) days, then such Party shall not be in default so long as it commences to cure within such period of time and thereafter diligently and continuously pursues such cure to completion. Upon the occurrence of a default, the non-defaulting Party shall not have the right to terminate the Agreement, but may seek any and all other remedies available at law and/or equity, including but not limited to an action for recovery of monetary damages or specific performance. Except as set forth to the contrary herein, any right or remedy of FPL and the Owner shall be cumulative and without prejudice to any other right or remedy, whether contained herein or not.

**8. Liability.** Except for Penalties assessed by a Compliance Enforcement Authority, no Party to this Agreement shall be liable to any other Party for any indirect, special, incidental or consequential losses, damages, claims, liabilities, costs or expenses (including attorney's fees and court costs) arising from the performance or non-performance of its obligations under this Agreement regardless of the cause (including intentional action, willful action, gross or ordinary negligence, or force majeure); *provided, however*, that a Party may seek equitable or other non-monetary relief as may be necessary to enforce this Agreement and that damages for which a Party may be liable to another Party under another agreement will not be considered damages under this Agreement.

**9. Waiver of Jury Trial; Costs.** EACH OF THE PARTIES HERETO IRREVOCABLY WAIVES ITS RIGHT TO A JURY TRIAL WITH RESPECT TO ANY ACTION OR CLAIM ARISING OUT OF ANY DISPUTE IN CONNECTION WITH THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE PARTIES HERETO TO ENTER INTO THIS AGREEMENT, AND SHALL SURVIVE THE CLOSING OR TERMINATION OF THIS AGREEMENT. In any and all litigation arising out of or in connection with enforcement of the terms, conditions or provisions of this Agreement, the prevailing Party in such litigation shall be entitled to recovery of each and all of its costs, including reasonable attorneys' fees.

**10. Applicable Law and Venue; Severability.** This Agreement shall be governed by and construed in accordance with the laws of the State of Florida (without giving effect to conflict of law principles) as to all matters, including but not limited to matters of validity, construction, effect, performance and remedies. Notwithstanding the foregoing, nothing shall affect the rights of the Parties under Section 215 of the FPA, any applicable agreement, the NERC Rules of Procedure, or rules or orders promulgated by FERC. THE PARTIES HERETO AGREE THAT VENUE IN ANY AND ALL ACTIONS AND PROCEEDINGS RELATED TO THE SUBJECT MATTER OF THIS AGREEMENT SHALL BE IN THE COURT OF THE STATE OF FLORIDA IN INDIAN RIVER COUNTY, FLORIDA, WHICH COURT SHALL HAVE EXCLUSIVE JURISDICTION FOR SUCH PURPOSE AND THE PARTIES HERETO IRREVOCABLY SUBMIT TO THE EXCLUSIVE JURISDICTION OF SUCH COURT AND IRREVOCABLY WAIVE THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF ANY SUCH ACTION OR PROCEEDING. SERVICE OF PROCESS MAY BE MADE IN ANY MANNER RECOGNIZED BY SUCH COURT. If any term, condition or provision, or any part thereof, is found by a Florida court to be unlawful, void or unenforceable, then that term, condition, provision or part thereof shall be deemed severable and will not affect the validity and enforceability of any of the remaining terms, conditions and provisions of this Agreement.

**11. FERC Jurisdiction.** Nothing in this Agreement shall be meant to imply or cede jurisdiction to FERC, NERC or any other regulatory or Compliance Enforcement Authority, to the extent that FERC, NERC or other regulatory or Compliance Enforcement Authority does not have jurisdiction over a Party to this Agreement. FERC, NERC and other regulatory or Compliance Enforcement Authority entities have limited jurisdiction over certain Parties and, by executing this Agreement, no Party is waiving or conceding any defenses it has to assert jurisdictional defenses, including, but not limited to, sovereign immunity, intergovernmental immunities, or lack of subject matter jurisdiction.

**12. Time and Entire Agreement.** Time is of the essence, and no extension of time shall be deemed granted unless made in writing and executed by both FPL and the Owner. This instrument constitutes the entire agreement between the Parties hereto and relative to the Agreement, and any agreement or representation which is not expressly set forth herein and covered hereby is null and void.

**13. Amendments.** All amendments, modifications, changes, alterations and supplements to this Agreement must be in writing and executed by both FPL and the Owner in order to be deemed valid and enforceable.

**14. No Waiver.** If either Party fails or elects to not enforce the other Party's breach of any term, condition or provision of this Agreement, then such Party's failure or election to not enforce the other Party's breach shall not be deemed a waiver of the non-breaching Party's right to enforce one or more subsequent breaches of the same or any other term, condition or provision of this Agreement.

**15. Notices.** All notices and other communications hereunder shall be in writing and shall be deemed given if delivered personally or mailed by overnight courier or registered or certified mail (return receipt requested), postage prepaid, to the recipient Party at its address (or at such other address for a Party as shall be specified by like notice; *provided, however*, that notices of a change of address shall be effective only upon receipt thereof):

(a) If to the Owner, to:

City of Vero Beach  
1053 20<sup>th</sup> Place  
Vero Beach, FL 32960  
Attention: City Manager

with copies to:

City of Vero Beach  
1053 20<sup>th</sup> Place  
Vero Beach, FL 32960  
Attention: City Attorney

and

Edwards Wildman Palmer LLP  
525 Okeechobee Boulevard  
Suite 1600  
West Palm Beach, FL 33401  
Attention: John G. Igoe, P.A.

(b) if to FPL, to:

Florida Power & Light Company  
700 Universe Boulevard EMT/JB  
Juno Beach, FL 33408  
Attention: EMT Contracts Department

with a copy to:

Florida Power & Light Company  
700 Universe Boulevard JB/Law  
Juno Beach, FL 33408  
Attention: General Counsel

16. **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, and all of which together shall constitute a single instrument.

**IN WITNESS WHEREOF**, the Parties have caused this Agreement to be signed by their respective duly authorized officers as of the date first above written.

**FLORIDA POWER & LIGHT COMPANY**

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

(Seal)

ATTEST:

**CITY OF VERO BEACH, FLORIDA**

\_\_\_\_\_  
[ ]  
City Clerk

\_\_\_\_\_  
[ ]  
Mayor

(City Seal)

Approved as to form and legal  
sufficiency:

Approved as conforming to municipal  
policy:

\_\_\_\_\_  
[ ]  
City Attorney

\_\_\_\_\_  
[ ]  
City Manager

Exhibit A

**Description of Capital Leases**

[TO COME]