

ALJ/GLW/pc

Decision 90 08 046 AUG 8 1990

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation of the Commission's)
 own motion into the desirability of)
 power purchases from cogenerators)
 and small power producers located) I.85-11-008
 outside of the purchaser's service) (Filed November 6, 1985)
 area or outside of California and)
 the terms and conditions which)
 should be applied to such purchases.)

O P I N I O N

I. Summary of Decision

This decision approves and adopts a settlement between Yankee Caithness Joint Venture (Yankee or YCJV) and Southern California Edison Company (Edison) with respect to the petitions filed previously by Yankee in this proceeding. This decision also dismisses with prejudice the petitions filed by Yankee.

The settlement is expressly conditioned upon the Commission's agreement that the expenses incurred by Edison under the settlement are reasonable and shall be recovered by in full by Edison in rates. We have found that the settlement is reasonable and in the public interest. While we expect that future Commissions will uphold and implement it, we cannot bind future Commissions regarding future recovery of these costs in rates.

II. Background

On November 1, 1984, Yankee submitted to Edison an executed Interim Standard Offer #4 (ISO4) contract for a 16.5 megawatt (MW) geothermal project located in Steamboat Springs, Nevada. The project site is located outside of Edison's service

territory (OST). Edison refused to execute the proffered IS04 contract because Yankee had not demonstrated to Edison's satisfaction that Yankee could deliver power from the project to Edison's system. On April 17, 1985 the Commission suspended IS04.

On February 12, 1986, Yankee submitted to Edison executed Standard Offer 2 (S02) contracts for six 25 MW projects. Three of the projects were to be located in Steamboat Springs, Nevada, and three were to be located in Dixie Valley, Nevada. As with the IS04 contract, Edison refused to execute the six S02 contracts because Yankee had not demonstrated to Edison's satisfaction that Yankee could deliver power from these projects to Edison's system. On March 19, 1986, the Commission suspended S02.

III. Pre-settlement Positions of the Parties

A. The Yankee Petitions

On November 7, 1985 Yankee filed a petition with the Commission requesting that Edison be ordered to execute the IS04 contract submitted by Yankee for the Steamboat Springs project. The petition was assigned by the Commission to Order Instituting Investigation (OII) 85-11-008.

On April 17, 1989, Yankee filed a second petition with the Commission, requesting that the six S02 contracts also be considered in I.85-11-008 and that Edison be ordered to execute these six contracts also. In Decision (D.) 89-08-035 we granted Yankee's request to have the six S02 contracts heard in this proceeding.

Yankees' contention in this proceeding:

"...is that there is no requirement in applicable law that it demonstrate an ability to deliver the power to be generated by its OST projects to Edison. YCJV has further contended that the information it submitted to Edison concerning its ability to deliver power was sufficient when compared to other QF projects

that received executed QF contracts from Edison." (Joint Motion, pp. 3-4.)

B. Edison

Edison's position on the Yankee petitions is that it was a reasonable business practice, as a precondition to Edison's execution of a tendered standard offer, for it to require an out-of-service territory qualifying facility to make a reasonable showing of its ability to deliver power to Edison's system:

"Such a requirement is a common sense predicate for rational resource planning. Edison has not been and is not now opposed to signing power purchase agreements with OST QFs. However, Edison contends that it was acting prudently in requiring some showing that an OST QF, located in a remote site distant from Edison's nearest point of interconnection, had a feasible plan for transmitting its power to Edison. The effect of concluding to the contrary is that Edison would be forced to accept all offers timely submitted, whether or not they are feasible. If Edison is forced to execute Standard Offer contracts with OST QFs without regard to their ability to deliver power, Edison's resource plan would then reflect potentially much greater amounts of QF power than could reasonably be expected to materialize." (Response of Southern Edison Company to Motion of Yankee Caithness Joint Venture to Compel Discovery, May 15, 1989, p. 5.)

IV. The Proposed Settlement

Edison and Yankee initiated settlement discussions in the fall of 1989. On February 16, 1990, after providing notice as required by Rule 51.1(b), Yankee and Edison conducted a settlement conference. The conference was attended by Edison, Yankee, Division of Ratepayer Advocates (DRA) and Steam Reserve Company.

The settlement was filed May 8, 1990, together with a "Joint Motion of Yankee Caithness Joint Venture and Southern

California Edison Company" (Joint Motion). The Joint Motion requests an order approving the settlement and dismissing Yankee's petitions with prejudice. The Joint Motion states that DRA supports the settlement and that all other parties, except San Diego Gas & Electric Company (SDG&E), have no position on the settlement.

Pursuant to Rule 51.4, all parties were allowed 30 days following the filing of the settlement in which to submit comments on the agreement. Only SDG&E filed comments. SDG&E's comments are discussed below.

Under the terms of the settlement, Edison agrees to execute seven power purchase agreements (PPAs) for the purchase by Edison of capacity and energy as follows:

- Four SO2-based contracts of 26 MW each;
- Two SO2-based contracts of 13 MW each; and
- One ISO4-based contract of 16.5 MW.

The settlement results in a total of 146.5 MW, a reduction in capacity of 20 MW from Yankee's original requests.

The PPAs embodied in the settlement (the proposed contracts) are based upon the standard offers which Yankee originally tendered in 1985 and 1986 (the original contracts). However, the proposed contracts differ from the original contracts in several significant respects. These differences are summarized in a side-by-side comparison included in the Joint Motion. These summaries, which are a clear and accurate description of the differences, are set forth in Appendix A and Appendix B to this opinion. The more significant terms are summarized below.

The proposed contracts use a different formula for the calculation of energy payments. The energy rate for the proposed contracts based on SO2 shall start with Edison's posted avoided cost at the time of firm operation, but shall be adjusted quarterly by a new price index. According to the Joint Motion:

"The energy rate, after the initial payment, will not be precisely at avoided cost, but will likely approximate that amount, because the indices on which the energy rate is based track costs which are reasonably related to costs which enter into Edison's avoided cost, although these indices are likely to be subject to less short-term change than [sic] Edison's avoided cost. Although Edison ratepayers are subject to unpredictable rises in costs under this energy rate, these risks are no greater than those associated with changes in Edison's avoided costs and are thus reasonable risks for the ratepayers to assume." (Joint Motion, pp. 5-6.)

For the proposed contract based on ISO4, Yankee shall receive 85% of the ten-year fixed payment energy stream of ISO4, to be paid over a 15-year period. The energy payments between years 16 and 30 will be at Edison's avoided cost.

The original contracts would have required Yankee to specify the size and location of each project at the time of execution. The proposed contracts reduce the amount of S02-based capacity as proposed in the original contracts from 150 to 130 MW. However, the proposed contracts allow Yankee to allocate the 16.5 MW of ISO4 capacity and the 130 MW of S02 capacity among any of various locations in Steamboat Springs and Dixie Valley, Nevada, as specified in the project proposals submitted by Yankee with the original contracts. Pursuant to the settlement, this election may be made up to 12 months after a decision by the Commission approving the settlement.

The term of each contract shall be 30 years commencing on the date of firm operation. The settlement agreement specifies various time frames for commencement of firm operation. For the proposed S02 contracts, firm operation may not begin earlier than 3 1/2 to 4 1/2 years after Commission approval of the settlement.

The settlement also specifies how and when interconnection points for each project will be identified. The

settlement provides specific milestones for project and transmission development. Yankee further agrees to pay all transmission, interconnection, and Edison system upgrade costs attendant with the seven proposed contracts.

Under the terms of the settlement neither party admits liability. Each party pays its own attorney costs and fees. The settlement is expressly conditioned upon the Commission's approval, and the Commission must find that the settlement and Edison's entry into the settlement are reasonable and prudent, and that expenses incurred by Edison are reasonable and shall be recovered in full by Edison in rates.

V. Analysis of the Settlement

Rule 51.1(e) of the Commission's Rules of Practice and Procedure state:

"The Commission will not approve stipulations or settlements, whether contested or uncontested, unless the stipulation or settlement is reasonable in light of the whole record, consistent with law, and in the public interest."

D.88-12-083 identifies some of the various factors typically used by courts and regulatory commissions to determine whether a settlement is fair, adequate, and reasonable:

"In order to determine whether the settlement is fair, adequate, and reasonable, the court will balance various factors which may include some or all of the following: the strength of the applicant's case; the risk, expense, complexity, and likely duration of further litigation; the amount offered in settlement; the extent to which discovery has been completed so that the opposing parties can gauge the strength and weakness of all parties; the stage of the proceedings; the experience and views of counsel; the presence of a governmental participant; and the reaction of the class members to the proposed settlement.

(Officers for Justice v. Civil Service Commission of the City and County of San Francisco, supra, 688 F 2d at p. 625.)

"In addition, other factors to consider are whether the settlement negotiations were at arm's length and without collusion; whether the major issues are addressed in the settlement; whether segments of the class are treated differently in the settlement; and the adequacy of representation. (Parker v. Anderson, supra, 667 F 2d at p. 1209; Armstrong v. Board of School Directors, supra, 616 F 2d at p. 314; M. Berenson Company v. Faneuil Hall Marketplace (D. Mass. 1987) 671 F Supp. 819, 823.)" (D.88-12-083, mimeo. p. 55.)

The parties to the settlement contend that the settlement between Yankee and Edison is a reasonable disposition of the parties' respective claims in this proceeding. The terms of the ISO4 and SO2 contracts have been modified to represent a middle ground between the parties' positions. The power purchase prices specified by the settlement are below those that would be in effect had Edison signed the contracts when they originally were tendered by Yankee. The power purchase prices are also higher than Yankee would have received had Edison been upheld in its refusal to execute the contracts originally tendered by Yankee.

Yankee's ability to allocate the PPAs among various project sites after execution of the agreement is a benefit to Yankee not contained in the original contracts. On the other hand, the proposed contracts also impose upon Yankee new requirements regarding transmission milestones not contained in the original contracts. We find that between Edison and Yankee, the settlement is a fair and reasonable compromise.

In finding that the settlement is a fair compromise between these two parties, we expressly state that neither the settlement nor its approval implies that the position of either party is correct or incorrect.

The parties contend that the settlement is manifestly in the public interest. They contend that "the compromise reflected by the settlement yields substantial tangible benefits to the ratepayers as compared with the contracts originally tendered by Yankee." (Joint Motion, p. 11.) Edison estimates that the 20 MW capacity reduction will save the ratepayers approximately \$19 million. The energy payments specified by the settlement are said to generate savings to the ratepayers of approximately \$44 million. Finally, the new milestones for interconnection and transmission are cited as substantial ratepayer benefits.

While we find that the settlement is a fair resolution of the dispute between Edison and Yankee, the reasonableness of the settlement from the ratepayers perspective is less apparent. The total savings which ratepayers are alleged to receive from the settlement will be realized only under very specific and uncertain assumptions. For example, the alleged savings from the proposed 20 MW reduction will be realized only if we assume that all seven projects were viable and would have been constructed but for Edison's refusal to execute the original contracts. Yet, it was Edison's position prior to the settlement that these projects "...were not sufficiently viable to warrant Edison acceptance as a reliable system resource." (Joint Motion, p. 4.)

Under different assumptions, the settlement could be found to impose additional costs on ratepayers. If we assume, for example, that the projects were not viable prior to 1990 but will be made viable by the terms of the settlement which allow until 1991 to allocate the contracts to specific sites, then we would conclude that the settlement will actually impose additional costs on ratepayers which they would not otherwise incur.

We find the estimated savings in energy payments to be equally speculative and uncertain. The estimated \$44 million in savings, which is based upon a comparison of the original contracts, assumes that Edison should have executed the original

contracts when tendered. On the other hand, if we assume that Edison properly refused to execute the original contracts, the settlement then would result in added costs to the ratepayers.

We are not comfortable relying upon an estimate of the costs or benefits of a settlement which assumes a particular outcome. A settlement is possible precisely because the outcome of a fully litigated proceeding is uncertain. Given this uncertainty, no single estimate of costs or benefits can properly reflect the value of the settlement to a particular party.

The economic analysis of the settlement would have been more useful if it had captured a range of possible outcomes. While it is reasonable to assume that the Commission might find that Edison wrongfully refused to execute the contract and to calculate benefits based on such an assumption, the parties should have also calculated the costs or benefits to ratepayers if the Commission had found that Edison properly refused to execute these agreements. A settlement, from the ratepayers perspective is reasonable only if it falls within the range of possible outcomes.

We make no judgment as to the probability of any of these outcomes. We cite these examples simply to demonstrate the scope of analysis which will be necessary in future cases to support a settlement which is conditional upon our express approval. In this particular instance, DRA concurs with the settlement despite the absence of a more fully developed comparison of its economic effects. Therefore, given DRA's support and the absence of opposition from any other party we will find this settlement to be in the public interest.

As noted earlier, the settlement is expressly conditioned:

"...on the unconditional approval of the CPUC as follows:

"...The CPUC must find this Agreement and Edison's entry into this Agreement to be reasonable and prudent and must find that the

expenses incurred by Edison under this Agreement and the PPAs are reasonable and shall be recovered in full by Edison in rates." (Settlement Agreement, pp. 21-22.)

We do find, based upon the information presented in the Joint Motion, that the expenses incurred by Edison under the settlement are reasonable. However, we cannot guarantee that such expenses shall be recovered in full by Edison in rates. Because these expenses will be recovered over a period of 30 years, such a guarantee would require us to bind future Commissions. This we cannot do. As we explained in D.88-12-083:

"The Public Utilities Code strengthens the proposition that we cannot bind future Commissions. Section 1708 provides: 'The commission may at any time...rescind, alter, or amend any order or decision made by it.' Section 457 permits utilities to enter into an agreement for a fixed period for the automatic adjustment of charges for electricity with the caveat 'Nothing in this section shall prevent the commission from revoking its approval at any time and fixing other rates and charges....' Finally, Section 451 provides that 'All charges demanded or received by any public utility...shall be just and reasonable' and Section 728 provides that if the Commission finds rates are unreasonable, 'the commission shall...fix...the just, reasonable...rates...to be thereafter observed and in force.' We have reviewed these statutes, which are familiar to all practitioners of public utility law in California, to impress upon the proponents of the settlement the limitations under which we act today. (cf. FPC v. Sierra Pac. Power Co. (1956) 350 US 348, 100 L. Ed. 388.) And we deliberately refrain from commenting on the consequences of a future Commission's changing of the terms of the settlement." (D.88-12-083, mimeo. p. 60.)

As in D.88-12-083, all we can state is our present determination that, taken as a whole, the settlements' terms produce a just and reasonable result, and that:

"...this Commission intends that all future Commissions should recognize and give all possible consideration and weight to the fact that this settlement has been approved based upon the expectations and reasonable reliance of the parties and this Commission that all of its terms and conditions will remain in effect for the full term of the agreement and be implemented by future Commissions."
(D.88-12-083, mimeo. p. 61.)

Finally, we turn to the comments of SDG&E. SDG&E states:

"SDG&E regards the proposed settlement as a bargained-for resolution of a dispute between Yankee Caithness and Edison, not as a matter to set precedent in other disputes between QFs and purchasing utilities. If the CPUC agrees with this understanding, SDG&E would not object to the proposed settlement. If the CPUC intends that the proposed settlement might be used as a precedent for other disputes between QFs and purchasing utilities, then SDG&E would request a hearing and a specific description of the issues on which the CPUC would be considering establishing precedent." [Emphasis in original.] (Comments of SDG&E on Joint Motion Regarding Settlement, June 4, 1990, pp. 1-2.)

SDG&E's qualified objection is unnecessary. Rule 51.8 provides as follows:

"Commission adoption of a stipulation or settlement is binding on all parties to the proceeding in which the stipulation or settlement is proposed. Unless the Commission expressly provides otherwise, such adoption does not constitute approval of, or precedent regarding, any principle or issue in the proceeding or in any future proceeding."

We establish no exception to rule 51.8 in this decision.

Findings of Fact

1. Yankee has petitioned for an order directing Edison to execute one ISO4 and six SO2 PPAs.
2. Edison asserts that it was justified in refusing to execute the contracts until Yankee demonstrated to Edison's

satisfaction that Yankee could deliver power from these projects to Edison's system.

3. Yankee and Edison have agreed to settle the dispute by recommending to the Commission a settlement agreement between Edison and Yankee Caithness Joint Venture, L.P. and Caithness Resources, Inc.

4. DRA supports the settlement.

5. SDG&E does not oppose the settlement, provided that the settlement does not constitute a precedent for other disputes between qualifying facilities (QFs) and purchasing utilities.

6. The terms of the ISO4 and SO2 contracts as originally tendered by Yankee have been modified by the settlement to represent a middle ground between the parties' positions. The power purchase prices specified by the settlement are below those that would be in effect had Edison signed the contracts when they originally were tendered by Yankee. The power purchase prices are higher than Yankee would have received had Edison been upheld in its refusal to execute the contracts originally tendered by Yankee.

7. The parties to the settlement complied with the Commission's settlement procedures as set forth in the Commission's Rules of Practice and Procedure.

8. The settlement agreement is reasonable in light of the whole record, consistent with law and in the public interest.

Conclusions of Law

1. The settlement agreement, as interpreted by this decision, should be approved and adopted.

2. This Commission cannot bind future Commissions in fixing just and reasonable rates for Edison. Nevertheless, in approving this settlement, based on our determination that taken as a whole its terms produce a just and reasonable result, this Commission intends that all future Commissions should recognize and give all possible consideration and weight to the fact that this settlement has been approved based upon the expectations and reasonable

reliance of the parties and this Commission that all of its terms and conditions will remain in effect for the full term of the agreement and be implemented by future Commissions.

3. The petitions filed by Yankee in this proceeding should be dismissed with prejudice.

4. This order should be effective today.

O R D E R

IT IS ORDERED that:

1. The settlement agreement (Appendix C), as interpreted by this decision, is approved and adopted.

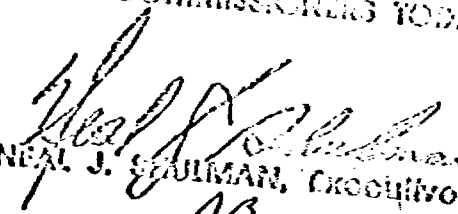
2. The petitions filed by Yankee in this proceeding are dismissed with prejudice.

This order is effective today.

Dated AUG 8 1990, at San Francisco, California.

G. MITCHELL WILK
President
FREDERICK R. DUDA
STANLEY W. HULETT
JOHN B. O'HANIAN
PATRICIA M. ECKERT
Commissioners

I CERTIFY THAT THIS DECISION
WAS APPROVED BY THE ABOVE
COMMISSIONERS TODAY


NEAL J. SEELMAN, Executive Director

.I.85-11-008

EXHIBIT A

YCJV SO2-BASED POWER PURCHASE AGREEMENTS (PPAs)

YCJV S02-BASED POWER PURCHASE AGREEMENTS (PPAs)

The YCJV S02-based PPAs shall be identical to Edison's standard form of S02 which was in effect from February 14, 1983 through March 19, 1986, except for the specific modifications identified in the side-by-side comparison below:

<u>Proposed S02-Based PPAs</u>	<u>S02</u>
<u>Amount of Power</u> <u>(Settlement Agreement §4.1.1)</u>	
1. The amount of S02-based capacity shall be reduced from 150 MW to 130 MW.	1. No provision in S02.
<u>Firm Allocation of Power</u> <u>(Settlement Agreement §4.1.3 and §4.1.4)</u>	
1. The power shall be supplied from projects developed on land leased, held, and controlled by YCJV and Caithness at Steamboat Springs and Dixie Valley, Nevada as specified in the project proposals submitted on or about the time the ISO4 and S02 contracts were submitted to Edison. Within 12 months of the final order of the CPUC unconditionally approving the Settlement Agreement, YCJV and Caithness shall irrevocably allocate the PPAs to either the Steamboat Springs or Dixie Valley locations. Said allocation shall include entire contracts and not portions thereof. If such allocation does not occur, then each such unallocated PPA shall terminate. Four of the S02-based contracts shall be allocated 26 MW of firm capacity each. Two of the S02-based contracts shall be allocated 13 MW of firm capacity each.	1. The project site is specified at the time of contract execution (§2.1).
<u>Energy Payments</u> <u>(Settlement Agreement §4.1.5.1)</u>	
1. (a) The initial payment for energy shall be the Initial Energy Rate, ¹ and	1. Energy payments will be paid at Edison's published avoided cost of energy for the contract term.

¹ The Initial Energy Rate shall be Edison's published avoided cost of energy as approved by the CPUC and in effect on the date of Firm Operation.

Proposed SO2-Based PPAsSO2

Energy Payments
(Settlement Agreement §4.1.5.1)
(Continued)

shall remain in effect during the first quarter of Firm Operation.

(b) Beginning the second quarter of Firm Operation, the Price Index² shall be used to adjust the Initial Energy Rate. For each successive quarter thereafter, but not longer than the Finance Period³ or 15 years from the date of Firm Operation, whichever is the lesser, the Price Index shall be used to adjust the previous quarter's Energy Rate⁴ to determine a new Energy Rate for the following quarter.

(c) For the remainder of the contract term, payment for energy delivered shall be at Edison's published avoided cost of energy as approved by the CPUC and as updated periodically.

² The price index shall be determined quarterly and will be based on the average of:

- The percentage change of the National Producer Price Index during the preceding quarter; and
- The percentage change during the preceding quarter of the Southern California Gas Company's non-core utility electric generation gas procurement charges as specified currently as GN-60N, under the Southern California Gas Company's Schedule No. GN-60. If GN-60N is no longer in effect under successor tariffs, the parties shall agree to an appropriate substitute basis to calculate the percentage change for this component of the Price Index. Such substitute shall, as closely as possible, approximate the gas purchases under GN-60N.

³ The period beginning on the date of Firm Operation and continuing until the amount of the project loan(s) outstanding on the date of Firm Operation is paid.

⁴ The Initial Energy Rate during the first quarter of Firm Operation, and for subsequent quarters, the previous quarter's energy rate multiplied by the following quantity: $(1 + \text{the Price Index})$.

Proposed SO2-Based PPAsSO2Capacity Payments
(Settlement Agreement §4.1.5.2)

1. The Firm Capacity Rate for the SO2-based PPAs is \$187/kW-yr.

1. Same.

Term
(Settlement Agreement §4.1.7)

1. Firm Operation under any SO2-based PPA shall not commence prior to three years and six months following final order of the CPUC, unconditionally approving this Agreement. Further, the Parties agree that at least one 13 MW contract and one 26 MW contract shall not begin Firm Operation sooner than four years and four months and six months, respectively, following said unconditional approval of this Agreement by the CPUC. If YCJV and Caithness begin power delivery under any of the SO2 contracts before the times agreed to in paragraph 4.1.7 of the Settlement Agreement, Edison will purchase any energy delivered under such contracts at its then current published avoided cost.

1. Firm Operation shall begin no later than five years following contract execution.

Transmission
(Settlement Agreement §4.1.8)

1. Firm transmission shall be arranged by YCJV and Caithness to one or more interconnection points in the Edison system. Said interconnection points shall be specified by Edison. From the interconnection points specified by Edison, YCJV and Caithness shall identify their anticipated interconnection point for the PPA within 12 months following approval of the Settlement Agreement. If YCJV and Caithness fail to designate its interconnection point within 12 months of Settlement Agreement approval, the PPA shall immediately terminate.

1. No provision in SO2.

Proposed S02-Based PPAsS02Transmission Development Milestones
(Settlement Agreement §4.1.10)

1. Within 12 months, YCJV and Caithness shall identify the transmission path (Path) of electricity from each project to an Edison-approved interconnection point on the Edison electric system.
2. For those portions of the path, over which power will be transmitted (wheeled) by another utility, YCJV and Caithness shall provide proof of all necessary interconnection and transmission service agreements for each such portion of the path. If Edison determines that such agreements do not meet the criteria set forth, YCJV and Caithness shall have six months from the date they are notified by Edison of such a deficiency to correct said deficiency.
3. For each portion of the Path where YCJV and Caithness intend to construct or have constructed a new transmission line, or rely on lines to be constructed by other entities, YCJV and Caithness or the entities on which YCJV and Caithness rely to construct the lines shall meet the following milestones:
 - i) File for all necessary permits within 24 months;
 - ii) Acquire all rights-of-way within 36 months; and
 - iii) Commence construction within 36 months evidenced by installation of footings and erection of the transmission structures.

Should any of the milestones (i-iii) not be met by YCJV and Caithness, the PPA shall terminate without any further action by Edison.

1. No provision in S02.
2. No provision in S02.
3. No provision in S02.

Proposed SO2-Based PPAs

S02

Project Development Milestones
(Settlement Agreement §4.2)

1. YCJV and Caithness agree to comply with the provisions of the Project Development Milestones as approved by the Commission in Uniform Standard Offer No. 1 adopted in D.89-02.065 on February 24, 1989 (February Milestones).

CPUC Approval
(Settlement Agreement §9)

1. The PPA is subject to unconditional approval of the Settlement Agreement by the CPUC. The PPA shall terminate if unconditional approval is not obtained.

1. S02 incorporates the Qualifying Facility Milestone Procedure.

1. No provision in S02.

All other contract provisions are the same as S02.

(END OF EXHIBIT A)

I.85-11-008

EXHIBIT 8

YCJV 16.5 MW SO4-BASED POWER PURCHASE AGREEMENT (PPA)

YCJV 16.5 MW POWER PURCHASE AGREEMENT (PPA)

The one 16.5 MW PPA is identical to Edison's standard form of ISO4 which was in effect prior to April 17, 1985, except for the specific modifications identified in the side-by-side comparison below:

Proposed YCJV 16.5 MW Contract

ISO4

Firm Allocation of Power
(Settlement Agreement §4.1.4):

1. The power shall be supplied from projects developed on land leased, held and controlled by YCJV and Caithness at Steamboat Springs and Dixie Valley, Nevada as specified in the project proposals submitted on or about the time the ISO4 and S02 contracts were submitted to Edison. Within 12 months of the final order of the CPUC unconditionally approving the Settlement Agreement, Seller shall irrevocably allocate the PPA to either the Steamboat Springs or Dixie Valley locations. If such allocation does not occur, then the PPA shall terminate.

1. The project site is specified at the time of contract execution (§1.2).

Payment (Settlement Agreement §4.1.5.1 (ii)):

1. Fixed energy payments will be extended over the first fifteen years of Firm Operation and shall not exceed, in the aggregate, 85% of the payments which would have been received by YCJV and Caithness if the energy payments were based on the ISO4 Forecast of Marginal Cost of energy.
2. The energy payments will be paid at Edison's published avoided cost of energy for contract years #16-30.

1. Energy payments for all energy during the First Period (10 years) shall be paid at the ISO4 Forecast of Marginal Cost of Energy (§9.2.1, Option 1).
2. Energy payments will be paid at Edison's published avoided cost for the remainder of the contract term, years #11-30.

Proposed YCJV 16.5 MW ContractISO4Capacity Payments
(Settlement Agreement §4.1.5.2)

1. The Firm Capacity Rate is \$198/kW-yr. from the table in effect at the time YCJV submitted their signed ISO4 on November 1, 1984.

1. Same.

Transmission (Settlement Agreement §4.1.3)

1. Firm transmission shall be arranged by YCJV and Caithness to one or more interconnection points in the Edison system. Said interconnection points shall be specified by Edison. From the interconnection points specified by Edison, YCJV and Caithness shall identify their anticipated interconnection point for the PPA within 12 months following approval of the Settlement Agreement. If YCJV and Caithness fail to designate its interconnection point within 12 months of Settlement Agreement approval, the PPA shall immediately terminate.

1. No provision in ISO4.

Transmission Development Milestones
(Settlement Agreement §4.1.10)

1. Within 12 months YCJV and Caithness shall identify the transmission path (Path) of electricity from each project to an Edison-approved interconnection point on the Edison electric system.
2. For those portions of the path, over which power will be transmitted (wheeled) by another utility, YCJV and Caithness shall provide proof of all necessary interconnection and transmission service agreements for each such portion of the path. If Edison determines that such agreements do not meet the criteria set forth, YCJV and Caithness shall have six months from the date they are notified by Edison of such a deficiency to correct said deficiency.

1. No provision in ISO4.

2. No provision in ISO4.

Proposed YCJV 16.5 MW ContractISO4

Transmission Development Milestones
(Settlement Agreement §4.1.10)
(Continued)

3. For each portion of the Path where YCJV and Caithness intend to contract or have constructed a new transmission line, or rely on lines to be constructed by other entities, YCJV and Caithness or the entities on which YCJV and Caithness rely to construct the lines shall meet the following milestones: (i) file for all necessary permits within 24 months; (ii) acquire all rights of way within 36 months; (iii) commence construction within 36 months evidenced by installation of footings and erection of the transmission structures. Should any of the milestones (i-iii) not be met by YCJV and Caithness, the PPA shall terminate without any further action by Edison.

3. No provision in ISO4.

Project Development Milestones
(Settlement Agreement §4.2)

1. YCJV and Caithness agree to comply with the provisions of the Project Development Milestones as approved by the Commission in Uniform Standard Offer No. 1 adopted in D.89-02.063 on February 24, 1989 (February Milestones).

1. No provision in ISO4.

CPUC Approval
(Settlement Agreement §9)

1. The PPA is subject to unconditional approval of the Settlement Agreement by the CPUC. The PPA shall terminate if unconditional approval is not obtained.

1. No provision in ISO4.

All other contract provisions are the same as ISO4.

I.85-11-008

EXHIBIT C

EXHIBIT C
SETTLEMENT AGREEMENT

SETTLEMENT AGREEMENT
BETWEEN
SOUTHERN CALIFORNIA EDISON COMPANY
AND
YANKEE CAITHNESS JOINT VENTURE, L.P. AND
CAITHNESS RESOURCES, INC.

EXHIBIT C

SETTLEMENT AGREEMENT

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Exhibit 1 - Southern California Gas Company's

Schedule No. GN-60

Exhibit 2 - Interim Standard Offer #4 Contract

Exhibit 3 - Standard Offer #2 Contract

Exhibit 4 - Project Proposals

Exhibit 5 - Energy Payments Schedules - 16.5 MW Contract

Exhibit 6 - Energy Payment Schedule - Forecast of Annual

Marginal Cost of Energy

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SETTLEMENT AGREEMENT

1. Parties

This Settlement Agreement ("Agreement") is entered into by Southern California Edison Company ("Edison"), Yankee Caithness Joint Venture ("YCJV"), and Caithness Resources, Inc. ("Caithness"), individually referred to as "Party" and collectively as "Parties."

Edison is a corporation organized under the laws of California.

YCJV is related to other entities as follows:

YCJV is a Nevada General Partnership in which the three limited partnerships listed below are general partners:

West Coast Geothermal, Ltd.

Pacific Geothermal L.P.

Mt. Whitney Geothermal Limited Partnership

The above three limited partnerships each have as their respective general partner Caithness Corporation, a Delaware corporation.

YCJV is the general partner in YCJV L.P., a Nevada limited partnership. YCJV L.P. also has a limited partner, Sequa Capital Corporation, which is a Delaware corporation.

Caithness is a New Jersey corporation.

//

2. Recitals

2.1 The Standard Offer Contracts

On November 1, 1984 YCJV submitted an executed Interim Standard Offer #4 ("ISO4") contract for 16.5 megawatts (MW) to Edison for a geothermal project located in Steamboat Springs, Nevada. Edison refused to execute said contract because YCJV had not demonstrated to Edison's satisfaction that YCJV had the ability to deliver power from that project to Edison's system.

On April 17, 1985 the California Public Utilities Commission ("CPUC") suspended the ISO4 contract.

On February 24, 1986, YCJV submitted six executed Standard Offer #2 ("SO2") contracts for 25 MW each to Edison. The contracts related to geothermal projects, three located in Steamboat Springs, Nevada, and three located in Dixie Valley, Nevada. Edison refused to execute said contracts because YCJV had not demonstrated to Edison's satisfaction that YCJV had the ability to deliver the power generated by these projects to Edison's system. On March 19, 1986 the CPUC suspended the SO2 contract.

2.2 Litigation

On November 7, 1985, YCJV filed a petition with the CPUC requesting that Edison be ordered to execute

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the ISO4 contract it had submitted on November 1, 1984. This Petition was assigned to the CPUC's investigation proceeding, I. 85-11-008. On August 3, 1989 the CPUC, in response to a supplemental petition filed by YCJV in the same proceeding, granted YCJV's request that the six SO2 contracts be considered therein. By said supplemental petition, YCJV requested that Edison be ordered to execute the SO2 contracts it had submitted on February 24, 1986.

Edison answered both petitions filed by YCJV and contended that it was not required to execute any of the contracts because YCJV had not demonstrated that it had the ability to deliver power generated by any of the projects to the Edison system.

3. Definitions

When used with initial capitalizations, whether in the singular or the plural, the following terms shall have the following meanings:

- 3.1 Agreement: This document, including the exhibits attached hereto.
- 3.2 Commission or CPUC: The Public Utilities Commission of the State of California.
- 3.3 Energy Rate: The Initial Energy Rate during the first quarter of Firm Operation, and for subsequent quarters, the previous quarter's energy rate

multiplied by the following quantity: $(1 + \text{the Price Index})$.

- 3.4 Finance Period: The period beginning on the date of Firm Operation and continuing until the amount of the project loan(s) outstanding on the date of Firm Operation is paid.
- 3.5 Firm Operation: The date agreed on by the parties on which the first generating unit(s) of the generating facility defined in each contract described in paragraph 4.1.3 herein is determined to be a reliable source of generation and on which such unit(s) can be reasonably expected to operate continuously at its (their) effective rating (expressed in kW).
- 3.6 Initial Energy Rate: The Initial Energy Rate shall be Edison's published avoided cost of energy as approved by the CPUC and in effect on the date of Firm Operation.
- 3.7 Price Index: The price index shall be determined quarterly and will be based on the average of:
 - 3.7.1 The percentage change of the National Producer Price Index during the preceding quarter; and
 - 3.7.2 The percentage change during the preceding quarter of the Southern California Gas Company's non-core utility electric

generation gas procurement charges as specified currently as GN-60N, under the Southern California Gas Company's Schedule No. GN-60 (Attached hereto as Exhibit 1). If GN-60N is no longer in effect under successor tariffs, the parties shall agree to an appropriate substitute basis to calculate the percentage change for this component of the Price Index. Such substitute shall, as closely as possible, approximate the gas purchases under GN-60N.

4. Terms and Conditions of Settlement

Edison, YCJV and Caithness wish to settle and to resolve their disputes and to terminate the litigation now pending between them. Accordingly, Edison and YCJV in consideration of the mutual promises hereinafter set forth agree as follows:

- 4.1 Edison will execute seven Power Purchase Agreements (PPAs) with YCJV and Caithness for the purchase by Edison of firm capacity and energy on the terms and conditions hereinafter set forth. One 16.5 MW PPA shall be identical to Edison's standard form of ISO4 which was in effect prior to April 17, 1985, attached as Exhibit 2 hereto, except for the specific modifications identified in this

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Agreement. The six remaining PPAs shall be identical to the Edison standard form of SO2 which was in effect from February 14, 1983 through March 19, 1986, attached as Exhibit 3 hereto, except for the specific modifications identified in this Agreement. The PPAs will be effective as of the date of the final order of the CPUC unconditionally approving this Agreement.

4.1.1 Amount of Power

The aggregate quantity of power for the seven PPAs shall be 146.5 MW.

4.1.2 Location

The power shall be supplied from projects developed on land leased, held and controlled by YCJV and Caithness at Steamboat Springs and Dixie Valley, Nevada as specified in the project proposals submitted by YCJV and Caithness on or about the time the ISO4 and SO2 contracts were submitted to Edison. Said proposals are attached hereto as Exhibit 4.

4.1.3 Allocation of Power

The 146.5 MW shall be allocated among the seven contracts as follows:

4.1.3.1 Four SO2 contracts as modified herein shall be allocated 26 MW of firm capacity each;

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- 4.1.3.2 Two SO2 contracts as modified herein shall be allocated 13 MW of firm capacity each; and
- 4.1.3.3 One ISO4 contract as modified herein shall be allocated 16.5 MW of firm capacity.

4.1.4 Firm Allocation of Power

Within 12 months of the final order of the CPUC unconditionally approving this Agreement, YCJV and Caithness shall irrevocably allocate each of the seven contracts to either the Steamboat Springs or Dixie Valley locations. Said allocation shall include entire contracts and not portions thereof. Each PPA that is not so allocated as required by this paragraph 4.1.4 shall terminate at the expiration of the aforementioned 12 months.

4.1.5 Payment

The rates for electricity purchased under each PPA following Firm Operation shall be as follows:

4.1.5.1 Energy Payments:

- (i) For the four 26 MW and two 13 MW contracts

- (a) Energy payments shall be determined on a basis that reflects Edison's seasonality and time-of-use factors as approved by the CPUC and subject to change by Edison with CPUC approval.
- (b) The initial payment for energy shall be the Initial Energy Rate, and shall remain in effect during the first quarter of Firm Operation.
- (c) Beginning the second quarter of Firm Operation, the Price Index shall be used to adjust the Initial Energy Rate. For each successive quarter thereafter, but not longer than the Finance Period or

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15 years from the date of Firm Operation, whichever is the lesser, the Price Index shall be used to adjust the previous quarter's Energy Rate to determine a new Energy Rate for the following quarter.

(d) For the remainder of the contract term, payment for energy delivered shall be at Edison's published avoided cost of energy as approved by the CPUC and as updated periodically.

(ii) For the 16.5 MW contract

(a) Energy payments shall be determined on a basis that reflects Edison's seasonality and time-of-use factors as approved by

the CPUC and subject to change by Edison with CPUC approval.

- (b) The energy payments for the first ten years of Firm Operation will be fixed based on the appropriate Energy Payment Schedule, attached as Exhibit 5 (Tables 1-6) hereto, for the year of Firm Operation.
- (c) The energy payments for years eleven through fifteen will be equal to Edison's published avoided cost of energy plus a payment as listed in the appropriate Energy Payment Schedule under the title "Years #11-15--Energy Payments," attached as

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Exhibit 5 (Tables 1-6)
hereto.

- (d) Notwithstanding the other provisions of this Section 4.1.5.1(ii), the energy payments under the Contract based on the appropriate Energy Payment Schedule in Exhibit 5 shall not exceed, in the aggregate, 85% of the payments which would have been received by YCJV and Caithness if the energy payments for kWh actually delivered were based on the payment schedule in Table 1, attached as Exhibit 6 hereto.
- (e) For the remainder of the contract term,

payment for energy delivered shall be at Edison's published avoided cost of energy as approved by the CPUC and as updated periodically.

4.1.5.2 Firm Capacity Rate:

Contract based on ISO4 -

\$198/kW-yr

Contracts based on SO2 -

\$187/kW-yr

The contract capacity payments shall be determined in each PPA on a basis that reflects Edison's seasonality and time-of-use factors as approved by the CPUC and subject to change periodically by Edison with CPUC approval. The contract firm capacity rate shall not be adjusted but shall remain constant for the contract term of each PPA.

4.1.6 Effective Date

This Agreement shall be effective upon execution by the Parties subject to the

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unconditional approval of this Agreement by the CPUC as provided in Section 9 of this Agreement.

4.1.7 Term

This Agreement shall automatically terminate if CPUC unconditional approval as provided in Section 9 is not obtained.

The term of each PPA shall be thirty years from the date of Firm Operation.

Firm Operation under any PPA which is based on the Edison standard form of SO2 attached as Exhibit 3 hereto, shall not commence prior to three years and six months following final order of the CPUC, unconditionally approving this Agreement.

Further, the Parties agree that at least one 13 MW contract and one 26 MW contract shall not begin Firm Operation sooner than four years and four years and six months, respectively, following said unconditional approval of this Agreement by the CPUC. If YCJV and Calithness begin power delivery under any of the SO2 contracts before the times agreed to in this paragraph 4.1.7, Edison will purchase any energy delivered under such contracts at its then current

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published avoided cost until the date of Firm Operation and at the price specified in this Agreement thereafter.

Each PPA shall be subject to termination by Edison if the date of Firm Operation for the first generating unit does not occur within five years of the date of the final order of the CPUC unconditionally approving this Agreement. In the cases wherein the designated 13 MW and 26 MW contracts described in this paragraph 4.1.7 shall not begin Firm Operation sooner than four years and four years and six months following unconditional approval of this Agreement by the CPUC, those contracts shall terminate if Firm Operation does not occur within five years and six months and six years, respectively, following unconditional approval by the CPUC of this Agreement. Moreover, the Firm Capacity of each PPA shall be the lower of the amount specified in the PPA or the amount of Firm Capacity demonstrated at the time YCJV and Caithness declare Firm Operation.

4.1.8 Transmission

Firm transmission shall be arranged by YCJV and Caithness to one or more interconnection points in the Edison system. Said interconnection points shall be specified by Edison, in the exercise of its sole discretion. From among the interconnection points so specified by Edison, YCJV and Caithness shall identify their anticipated interconnection point for each project within twelve months following the final order of the CPUC unconditionally approving this Agreement. Edison agrees to consider including a determination of whether Lugo, Mira Loma, and Control Substations may be appropriate points of interconnection. If YCJV or Caithness fails to designate its anticipated interconnection point for a PPA within the time specified in this paragraph 4.1.8, said PPA shall immediately terminate, without further action by Edison. The firm transmission arranged by YCJV and Caithness shall, in Edison's sole judgment, based on prudent utility operating practices in California, be of a type and quality compatible with delivery of a firm capacity resource to the Edison system.

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4.1.9 Costs of Transmission, Interconnection
and/or Upgrades

YCJV and Caithness shall pay the entire cost, if any, of: (a) transmitting their power to Edison's electric system; (b) interconnecting with Edison's electric system; and (c) upgrading within the Edison electric system to the point or points of interconnection for each PPA.

4.1.10 Transmission Development Milestones

YCJV and Caithness shall meet each of the milestones hereinafter listed within the time periods designated below following the final order of the CPUC unconditionally approving this Agreement.

4.1.10.1 Within 12 months, YCJV and Caithness shall identify the transmission path (Path) of electricity from each project to an Edison-approved interconnection point on the Edison electric system.

4.1.10.2 For those portions of the Path over which power will be transmitted (wheeled) by another utility, YCJV and Caithness shall

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within 18 months provide proof of completion of all necessary interconnection and transmission service agreements for each such portion of the path. If Edison determines such agreements do not meet the criteria set forth in paragraph 4.1.8 herein, YCJV and Caithness shall have six months from the date Edison notifies YCJV and Caithness of any such deficiency to correct said deficiency.

4.1.10.3 For each portion of the Path where YCJV and Caithness intend to construct or have constructed a new transmission line, or rely on lines to be constructed by other entities, YCJV and Caithness or the entities on which YCJV and Caithness rely to construct the lines shall meet the following milestones:

- (i) within 24 months, file for all necessary permits for the Path;

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- (ii) within 36 months, acquire all rights of way;
- (iii) within 36 months, commence construction of the projects under each PPA by commencing installation of the footings and erection of the transmission structures.

Each PPA executed by YCJV and Caithness shall have the above milestones specifically incorporated therein. Should YCJV and Caithness fail to meet any of the milestones set forth in this paragraph 4.1.10.3 respecting any PPA, such PPA shall terminate without any further action by Edison.

- 4.2 Regarding each PPA, YCJV and Caithness agree to comply with the provisions of the Project Development Milestones as approved by the Commission in Uniform Standard Offer No. 1 adopted in D.89-02.065 on February 24, 1989 (February 1989 Milestones). Said provision shall be incorporated into each PPA referenced in Section 4.1 herein.

except insofar as the February 1989 Milestones may be inconsistent with the milestones set forth in paragraph 4.1.10 herein. In such case of inconsistency, the milestones in paragraph 4.1.10 shall prevail.

- 4.3 Edison, YCJV and Caithness shall consult with and seek the support of the Commission's Division of Ratepayer Advocates as to the terms of this Agreement prior to filing this Agreement with the CPUC.

5. Assignment

None of the Parties hereto shall assign its right, title or interest in any of the PPAs to any entity without the prior written consent of the other Party which consent shall not be unreasonably withheld, except that Edison agrees to consent to the assignment by Caithness of its interest in one or more of the PPAs to any of Caithness' affiliates. A Caithness affiliate is defined as an entity in which Caithness is the general partner. Caithness shall provide notification to Edison of such assignment and shall provide evidence of the affiliation. Edison shall provide written consent of such assignment upon determination that it meets the conditions specified. No assignment of a PPA shall relieve the assigning party of any of its obligations thereunder until such obligations have been assumed by the assignee. In addition, any assignment by Caithness shall

not increase Edison's obligations nor diminish its rights under any PPA. When duly assigned in accordance with the foregoing, the PPA shall be binding upon and shall inure to the benefit of the assignee.

6. Release

Edison, its parents, subsidiaries, partners, partnerships, limited partnerships, limited partners, affiliates, related entities, agents, or employees on the one side and YCJV and Caithness, respectively, their parents, subsidiaries, partners, limited partners, partnerships, limited partnerships, affiliates, related entities, agents, or employees on the other side hereby fully release and discharge the other of all rights, claims, causes of action, damages, liabilities, losses, and costs that each Party(ies) or its successors now have or may have after the execution of this Agreement against the other Party(ies) and its successors arising out of or in any way related to the facts recited in Section 2 herein. The Parties agree that this release applies to all injuries, damages, losses, complaints or causes of action whether before regulatory bodies or the courts, claims or liabilities, whether known or unknown, foreseen or unforeseen, present or future, and the Parties waive the application of Civil Code Section 1542 which reads as follows:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at

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the time of executing the release, which if known by him must have materially affected his settlement with the debtor".

7. No Admission of Liability

The Parties acknowledge that this Agreement constitutes the settlement of disputed claims and that entering into this Agreement shall not constitute an admission of fault, wrongdoing, liability or responsibility by a Party thereto.

8. Costs and Fees

Each Party hereto shall pay its own costs and attorneys' fees in connection with the litigation described above and the preparation and execution of this Agreement, the PPAs, and any related documents.

9. Conditions of Agreement

This Agreement is conditioned on the unconditional approval of this Agreement by the CPUC as follows:

- 9.1 The CPUC must find this Agreement and Edison's entry into this Agreement to be reasonable and prudent and must find that the expenses incurred by Edison under this Agreement and the PPAs are reasonable and shall be recovered in full by Edison in rates.
- 9.2 The CPUC must dismiss the Petition and Amended Petition heretofore filed by YCJV with prejudice.
- 9.3 The CPUC must take no position on the validity or lack of validity of a Party's claims with respect to any claims, defenses or related issues settled by

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this Agreement and must find that neither this Agreement nor its approval implies that any such claims are either correct or incorrect.

10. Nonprecedent

This Agreement is not intended by the Parties to be binding precedent in any future proceeding or litigation not involving the matters covered by this Agreement.

11. Previous Communications

This Agreement contains the entire agreement and understanding between the Parties as to the subject matter of the Agreement, and merges and supersedes all prior agreements, representations, and discussions between the Parties.

12. Nonwaiver

None of the provisions of this Agreement shall be considered waived by a Party unless such waiver is given in writing. The failure of a Party to insist in any one or more instances upon strict performance of any of the provisions of this Agreement or to take advantage of any of its rights hereunder shall not be construed as a waiver of any such provisions or the relinquishment of any such rights for the future, but the same shall continue and remain in full force and effect.

13. Effect of Subject Headings

Subject headings in this Agreement are inserted for convenience only, and shall not be construed as interpretations of text.

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14. Governing Law

This Agreement shall be interpreted, governed and construed under the laws of the State of California as if executed and to be performed wholly within the state of California.

15. Duplicate Original

This Agreement is executed in five counterparts, each of which shall be deemed an original.

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16. Signature Clause

YCJV and Caithness, respectively, represent and warrant that the officers who sign below have authority to execute this Agreement on behalf of YCJV and Caithness, respectively, and that, together, YCJV and Caithness have complete and exclusive authority to make commitments and contracts relating to the projects which are located in Steamboat Springs and Dixie Valley, Nevada and which are mentioned in Section 2 herein.

Executed this 8th day of March, 1989.

line

SOUTHERN CALIFORNIA EDISON COMPANY

By *Robert Dietrich*
 Name: Robert Dietrich
 Title: Vice President

YANKEE CAITHNESS JOINT VENTURE, L.P.

by Yankee Caithness Joint Venture

by West Coast Geothermal, Ltd.

by Caithness Corporation

by *William A. Bingham*
 President

by Pacific Geothermal L.P.

by Caithness Corporation

by *William A. Bingham*
 President

APPROVED AS TO FORM:	
DAVID N. CARRY, III	
Vice President and General Counsel	
By <u><i>J. D. Hughes</i></u>	Attorney
<u>3/5</u>	<u>10 90</u>

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by Mt. Whitney Geothermal Limited
Partnership

by Caithness Corporation

by William A. Bingham
President

CAITHNESS RESOURCES, INC.

by William A. Bingham
President

(END OF EXHIBIT C)