

From: Allen, Meredith
Sent: 5/27/2010 1:18:08 PM
To: 'Schwartz, Andrew' (as2@cpuc.ca.gov)
Cc:
Bcc:
Subject:

Contract Price.

(a) Contract Price. The initial Contract Price, commencing on the First Unit Initial Energy Delivery Date, shall be as set forth in Appendix I. As set forth on Appendix I, there shall be one Contract Price if the Project uses Wet Cooling Technology, and a different Contract Price if the Project uses Dry Cooling Technology. The ultimate Contract Price shall be determined according to the process set out in Section 4.1(b)(ii).

(b) Contract Price Adjustments.

(i) If the First Unit Commercial Operation Date is delayed due to a Permitting Delay or Transmission Delay pursuant to and in accordance with Section 3.9(c), the Contract Price shall be adjusted up to, but not in excess of, the applicable amount in the appropriate "delay" column (i.e., 6 months, 12 months or 18 months) as set forth in Appendix I. The Contract Price adjustment shall apply solely in the event of a Permitting Delay or Transmission Delay and such adjustment shall reflect only the Seller's documented, incremental increased costs incurred in achieving the First Unit Commercial Operation Date due solely to the Permitting Delay or Transmission Delay. Seller shall provide Buyer such Contract Price adjustment cost information on a preliminary basis with Seller's Notice of Extension provided pursuant to Section 3.9(c)(iii). Seller shall provide to Buyer the final proposed Contract Price adjustment, cost information and accompanying documentation sixty (60) days prior to the First Unit Commercial Operation Date. No Contract Price adjustment shall be made under this Section 4.1(b)(i) for Transmission Delays if on or before April 30, 2011, CAISO or the Participating Transmission Owner (as applicable) has agreed in writing to complete the Electric System Upgrades necessary to interconnect the Project to the CAISO Grid and the CPUC has approved the California portion of the Palo Verde-Devers 2 Line. Furthermore, no Contract Price adjustment shall be made under this Section 4.1(b)(i) for Permitting Delay if permits 1, 6, 10, 18 and 26 set out in Appendix VII have been obtained by the dates for such permits set out in Appendix VII. Before any Contract Price adjustment shall become effective, Seller shall demonstrate in writing to Buyer's reasonable satisfaction that the delay was caused by the Transmission Delay or Permitting Delay in question and that adjustment to the Contract Price accurately reflects the incremental increased costs attributable to the Transmission Delay or Permitting Delay in question incurred by Seller to achieve the First Unit Commercial Operation Date.

(ii) Seller shall use Commercially Reasonable Efforts to secure the required Governmental Approvals in order to operate the Project using Wet Cooling Technology. The Parties agree that, if, despite the Commercially Reasonable Efforts of Seller, Seller shall be unable to secure the required Governmental Approvals to operate the Project using Wet Cooling Technology, or if such Governmental Approvals would be subject to

material conditions not acceptable to Seller in its sole reasonable discretion, but Seller shall be able to secure Governmental Approvals to operate the Project using Dry Cooling Technology, the Project shall be designed, constructed, and operated using Dry Cooling Technology and the Contract Capacity, Contract Quantity, and Contract Price shall be as set forth in the row entitled “Dry Cooling Technology” on Appendix I; otherwise, the Project shall be designed, constructed, and operated using Wet Cooling Technology and the Contract Capacity, Contract Quantity and Contract Price shall be as set for in the row entitled “Wet Cooling Technology” on Appendix I. Seller’s Progress Reports shall include information regarding Seller’s efforts to secure the required Governmental Approvals for using Wet Cooling Technology and any conditions placed on Seller or the Project by Governmental Authorities for use of Wet Cooling Technology or Dry Cooling Technology.