

QFID# 6310, Caithness 251 Wind LLC



**SOUTHERN CALIFORNIA
EDISON**

An *EDISON INTERNATIONAL* Company

RENEWABLE POWER PURCHASE AND SALE AGREEMENT II

between

SOUTHERN CALIFORNIA EDISON COMPANY

and

CAITHNESS 251 WIND LLC

(QFID # 6310)

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- A. Definitions
- B. Generating Facility and Site Description
- B-1. Provisional ISO4 Transition Plan
- C. Notice List
- D. Forecasting and Scheduling Requirements and Procedures
- E. Turbine Cost Scope Document
- F. Seller's Annual Energy Delivery Obligation
- G. Seller's Milestone Schedule
- H. Milestone Progress Reporting Form
- I. Form of Guaranty Agreement
- J. Non-Disclosure Agreement
- K. Time of Delivery Periods and Energy Payment Allocation Factors
- L. Procedure for Partial or Full Return of Development Security
- M. Form of Letter of Credit
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- O. Independent Performance Engineer
- P. ISO Change Cost Payment Calculation
- Q. Meteorological Equipment Specifications
- R. Baseline Infrastructure Configuration and Baseline Infrastructure Costs
- S. SCE Penalties and ISO Sanctions
- T. Actual Availability Report

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RENEWABLE POWER PURCHASE AND SALE AGREEMENT

between

SOUTHERN CALIFORNIA EDISON COMPANY

and

CAITHNESS 251 WIND LLC

(QFID # 6310)

This Renewable Power Purchase and Sale Agreement, together with the exhibits, attachments, and any referenced collateral agreement or similar arrangement between the Parties (collectively, the "Agreement") is made and effective as of the following date: November 15, 2006 ("Effective Date").

This Agreement is entered into between:

- (i) **Southern California Edison Company** ("SCE"), a California corporation, whose principal place of business is at 2244 Walnut Grove Avenue, Rosemead, California 91770, and
- (ii) **Caithness 251 Wind LLC** ("Seller"), a Delaware limited liability company, whose principal place of business is at 9790 Gateway Drive, Suite 220, Reno, Nevada 89521.

SCE and Seller are sometimes referred to herein individually as a "Party" and jointly as "Parties."

Seller is willing to construct, own, and Operate an electric energy Generating Facility and to sell all electric energy produced by the Generating Facility as specified herein together with all Environmental Attributes, Capacity Attributes and Resource Adequacy Benefits to SCE.

SCE is willing to purchase all electric energy delivered by Seller to SCE generated by such Generating Facility together with all Environmental Attributes, Capacity Attributes and Resource Adequacy Benefits pursuant to the terms and conditions set forth herein.

SCE and Seller (f/k/a ZWHC) have entered into the 251 PPAs under which Seller and other entities have agreed to sell electrical energy and capacity to SCE under ISO4 pricing from wind turbines located on the Site or in a contiguous geographical area. During the construction of the Generating Facility, Seller shall tear down and remove some of the wind

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turbines currently located at the Site which generate power under the 251 PPAs and replace them with the Wind Turbines. On or before Initial Synchronization, the Monolith X PPA, the Monolith XI PPA and the Monolith XII PPA shall be amended to reduce the nameplate capacity thereunder due to the removal of some of the turbines during the construction of the Generating Facility and the Monolith XIII PPA shall be terminated so that Seller's electrical energy and other attributes generated at the Generating Facility may be sold to SCE exclusively under this Agreement and under another power purchase agreement to be executed concurrently with this Agreement. The other sellers (H&S and VGIV) remaining under the Monolith X PPA, the Monolith XI PPA and the Monolith XII PPA shall continue to sell electrical energy under such power purchase contracts, as amended. The plan for transitioning from the sale of electricity exclusively under the 251 PPAs to the sale of electricity in part under the 251 PPAs, as amended, in part under this Agreement and in part under another power purchase and sale agreement to be executed concurrently with this Agreement is described in greater detail in the "Provisional ISO4 Transition Plan" attached as Exhibit B-1. As set forth herein, the Parties contemplate that the Provisional ISO4 Transition Plan will be amended after the Effective Date.

Capitalized terms in this Agreement shall have the meanings set forth in Exhibit A.

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ARTICLE ONE. SPECIAL CONDITIONS

1.01 Generating Facility.

- (a) Name: Caithness 251 Wind LLC
- (b) Location of Site: 13000 Jameson Road, Tehachapi, California 93561, as further described in Exhibit B.
- (c) Eligible Renewable Energy Resource Type: Wind Generating Facility.
- (d) Nameplate Contract Capacity: Seller shall provide Notice to SCE of the Nameplate Contract Capacity on or before the date that is six (6) months after the Trigger Date, *provided* in no event shall the Nameplate Contract Capacity be less than 5.80 MW or greater than 15.80 MW ("Maximum Nameplate Contract Capacity").

The Nameplate Contract Capacity may be subject to reduction as set forth in Section 3.04(d).

(e) Seller's Generating Facility Efficiency Guarantee:

<i>Firm Operating Period Year following commencement of Term</i>	<i>Seller's Generating Facility Efficiency Guarantee</i>
1	88.77%
2	88.77%
3	88.77%
4	88.77%
5	88.77%
6	88.77%
7	88.77%
8	88.77%
9	88.77%
10	88.77%
11	88.27%
12	87.77%
13	87.27%
14	86.77%
15	86.27%
16	85.77%
17	85.27%
18	84.77%
19	84.27%

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20	83.77%
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1.02 Trigger Date.

The Trigger Date shall be the earlier of: (a) the date selected by Seller, in its sole discretion, by Notice to SCE or (b) the earliest date on which all of the following have occurred: (i) CPUC Approval has been obtained, (ii) CEC Verification and Certification has been obtained; (iii) Seller has (A) executed an interconnection agreement with ISO for transmission and interconnection access with respect to the Generating Facility and (B) been satisfied that the cost and terms of all transmission and interconnection rights and access with respect to the Generating Facility are satisfactory and has provided Notice of same to SCE; and (iv) Federal Production Tax Credit Legislation is in full force and effect and extended so that PTCs are available for any Wind Turbines at the Generating Facility which are "placed-in-service" prior to the date which is no less than two (2) years from that date that the conditions set forth in clauses (i), (ii) and (iii) above are achieved.

If Seller has not selected a date and provided Notice of same to SCE under clause (a), Seller must provide prompt Notice to SCE when the conditions set forth in clause (b) are achieved.

1.03 Startup Deadline.

The Startup Deadline shall be the date which is twenty-four (24) months after the Trigger Date, but in no event later than December 31, 2012, or as may be agreed to in a writing signed by both Parties.

The Startup Deadline shall be extended on a day-for-day basis for any Force Majeure event or for any delays in construction under an agreement for transmission and interconnection access with respect to the Generating Facility which are not caused or contributed to by Seller.

1.04 Firm Operating Period Start Date.

The Firm Operating Period Start Date shall be the date that is twelve (12) months after the Initial Operating Period Start Date, plus any additional days for Force Majeure as provided in Section 5.04, or as may be agreed to in a writing signed by both Parties.

1.05 Term.

The Term shall commence as set forth in Section 2.03(a) and shall end on the last day of the calendar month which is two hundred forty (240) months from the month of the

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Firm Operating Period Start Date, *provided that* the Term shall be extended on a day-to-day basis for any Force Majeure event occurring during the Term.

1.06 Energy Price.

SCE shall pay Seller the Energy Price. The Energy Price shall be equal to the fixed price of Seventy-Nine Dollars and Forty-Four Cents (\$79.44) per MWh, subject to (i) SCE's option to adjust the Energy Price and Performance Assurance Amount in accordance with Section 1.09 of this Agreement and (ii) any adjustments made pursuant to Sections 2.04(a)(v) and/or 3.06(e)

1.07 Performance Assurance Amount.

On or before the commencement of the Term, One Million Nine Hundred Sixty-Three Thousand Four Hundred Twenty-Five dollars (\$1,963,425), subject to SCE's option to adjust the Energy Price and Performance Assurance Amount in accordance with Section 1.09 of this Agreement.

1.08 Seller's Guarantor.

- (a) Guarantor: An entity that may from time to time become party to a Guaranty Agreement in accordance with Section 8.02(a).
- (b) Cross Default Amount: To be supplied if there is a Guarantor.

1.09 SCE's Option to Adjust Energy Price and Performance Assurance Amount: EDR Collateral Amount.

- (a) Seller shall, on the Trigger Date, provide Notice to SCE of Seller's forecasted Initial Operating Period Start Date. Upon receipt of such Notice, SCE, in its sole discretion, shall have the option to adjust the Energy Price and the applicable Performance Assurance Amount to any one of the following three combinations:

	<u>Energy Price (per MWh) Amount</u>	<u>Applicable Performance Assurance</u>	
(a)	\$79.44	\$1,700,000	+\$263,425
(b)	\$77.58	\$1,300,000	+\$257,257
(c)	\$72.38	\$ 0.00	

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Provided, however, in the event that SCE selects the Energy Price equal to \$72.38 per MWh with the corresponding Performance Assurance Amount equal to Zero dollars (\$0) above (the "Low Price Point"), Seller shall be obligated to post an additional collateral amount of Two Hundred Forty Thousand Fourteen Dollars (\$240,014) (the "EDR Collateral Amount") pursuant to Seller's obligations in Section 12.03(a)(iv) with respect to EDR proceedings.

Provided further, that the EDR Collateral Amount and the amounts listed after the "+" with respect to the first three Performance Assurance Amounts above are based on the Nameplate Contract Capacity being equal to the Maximum Nameplate Contract Capacity, and shall be reduced pro rata to the extent that the Demonstrated Nameplate Contract Capacity on or before the commencement of the Term is less than the Maximum Nameplate Contract Capacity.

To exercise its option to adjust the Energy Price and the applicable Performance Assurance Amount in accordance with this Section, SCE must, on or before thirty (30) days after the Trigger Date, send Seller Notice of the Energy Price and applicable Performance Assurance Amount that SCE has elected.

Upon Seller's receipt of such Notice, this Agreement shall be deemed to have been automatically amended to reflect such elected Energy Price and applicable Performance Assurance Amount, and both Parties will execute all documents and instruments necessary to document such amendment to this Agreement.

**** End of ARTICLE ONE ****

The contents of this document are subject to restrictions on disclosure as set forth herein.

ARTICLE TWO. TERM AND CONDITIONS PRECEDENT; TERMINATION

2.01 Effective Date.

This Agreement shall become effective on the Effective Date, although, as described herein, many of the rights and responsibilities of the Parties commence with the beginning of the Term.

2.02 Obligations Prior to Commencement of Term.

(a) CPUC Filing and Approval of this Agreement.

Within forty-five (45) days after the Effective Date, SCE shall file with the CPUC the appropriate request for CPUC Approval.

SCE shall seek such approval expeditiously, including promptly responding to any requests for information related to the request for approval from the CPUC.

Seller shall use commercially reasonable efforts to support SCE in obtaining CPUC Approval.

SCE shall have no obligation to seek rehearing or to appeal a CPUC decision which fails to approve the Agreement or to contain findings required for CPUC Approval without conditions or modifications unacceptable to either Party.

(b) Seller's Interconnection Application.

Seller shall exercise diligence in obtaining a FERC-accepted interconnection agreement and any transmission, distribution or other service agreement required to transmit electric energy from the Generating Facility to the Delivery Point.

(c) Seller's Regulatory and Governmental Filings.

Within one hundred eighty (180) days after the Effective Date, Seller shall file:

- (i) An application or applications, or other appropriate request or requests with the appropriate Governmental Authority for all Permits; and
- (ii) An application or other appropriate request to the CEC for CEC Certification and Verification.

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Seller shall expeditiously seek to obtain all Permits and CEC Certification and Verification, including promptly responding to any requests for information from the requesting authority, and SCE shall use commercially reasonable efforts to cooperate with and support Seller in obtaining all such Permits and CEC Certification and Verification.

(d) Site Control.

Seller shall expeditiously seek the renewal or extension of all Leases related to the Site.

(e) Site Plan, Final ISO4 Transition Plan and Metering Plan.

Within sixty (60) days after the Trigger Date, Seller shall provide to SCE:

- (i) A proposed "Site Plan," to be attached hereto as a part of an amended Exhibit B, setting forth the physical location of each Wind Turbine on the Site, as contemplated in the Final ISO4 Transition Plan (described below);
- (ii) A proposed "Final ISO4 Transition Plan," detailing the number and capacity of wind turbines that Seller proposes will remain under the 251 PPAs, the number and nameplate capacity of wind turbines that Seller proposes will transfer to this Agreement (the "Transferring Capacity") the number and nameplate capacity of Wind Turbines (both new and transferring) to be included in this Agreement, the estimated date on which the Transferring Capacity shall transfer to and be subject to this Agreement, and all documents, including one-line diagrams and timelines, sufficient to demonstrate the manner in which Seller intends to interconnect Wind Turbines under this Agreement and effectuate the proposed Final ISO4 Transition Plan. The Parties shall negotiate reasonably and in good faith during the sixty (60) day period following Seller's submission of the Final ISO4 Transition Plan in an effort to agree upon the Final ISO4 Transition Plan; *provided that* Seller may revise the Final ISO4 Transition Plan due to reasonable changes in Seller's construction plan, but in no event shall the Nameplate Contract Capacity exceed the Maximum Nameplate Contract Capacity. Seller shall promptly provide notice of such changes to SCE and the Parties shall negotiate in good faith in an effort to agree upon any revisions to the Final ISO4 Transition Plan.
- (iii) A proposed "Metering Plan," to be incorporated into an amended Exhibit B, setting forth the final electrical metering configuration intended by Seller to be established for the Wind Turbines of the

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Generating Facility, as contemplated in the Final ISO4 Transition Plan.

(f) Lender Consent.

Seller shall promptly submit this Agreement to its Lenders for review and approval and use its commercially reasonable efforts to obtain such approval ("Lender Consent") within ninety (90) days after the Effective Date.

2.03 Conditions Precedent to Commencement of Term.

(a) Commencement of Term.

The Term shall commence on the last to occur of the following:

- (i) SCE has obtained or waived CPUC Approval, as provided herein;
- (ii) Seller has obtained CEC Certification and Verification;
- (iii) Seller has obtained all necessary Leases for the Site in accordance with Section 2.02(d);
- (iv) Seller has obtained all necessary Permits;
- (v) Seller has posted with SCE the Performance Assurance required under Section 1.07 and Section 8.02;
- (vi) All sellers under the 251 PPAs have executed mutually agreed upon amendments to the 251 PPAs in accordance with the Final ISO4 Transition Plan, and Seller has obtained consents from lenders or any other consents required in connection with any such amendments;
- (vii) SCE and Seller have executed all subordinated security interest and mortgage documents required by Section 8.04;
- (viii) SCE shall have been authorized by the ISO to Schedule the electric energy produced by the Generating Facility with the ISO;
- (ix) Seller shall have installed and placed in operation the stand-alone meteorological station required under Section 3.22;
- (x) Seller has complied with all of the requirements set forth in Section 3.10(b);
- (xi) Seller has achieved Initial Operation; and

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- (xii) Seller shall have obtained the Lender Consent, on terms and conditions reasonably satisfactory to Seller, within ninety (90) days after the Effective Date.

(b) Initial Operation.

Initial Operation shall, if the Generating Facility and Seller meet the requirements of this Section 2.03(b), be deemed to have occurred on the date selected by Seller (the "Initial Operating Period Start Date") to begin delivering Product to SCE.

In addition to the Notice provided pursuant to Section 1.09, Seller shall provide at least three (3) Business Days advance Notice to SCE of the Initial Operating Period Start Date.

The Initial Operating Period Start Date shall be no later than sixty (60) days from the first date that the Generating Facility operates in parallel with the applicable Transmission Provider's electric system.

In addition, as of the Initial Operating Period Start Date:

- (i) The Generating Facility shall be Operating in parallel with the applicable Transmission Provider's electric system; and
- (ii) Seller shall be Forecasting and delivering electric energy from the Generating Facility to SCE at the Delivery Point.

2.04 Termination Rights of the Parties.

(a) Termination Rights of Both Parties.

Either Party shall have the right to terminate the Agreement on Notice, which shall be effective five (5) Business Days after such Notice is given in the following circumstances:

- (i) If CPUC Approval has not been obtained within one hundred eighty (180) days after SCE files the request for CPUC Approval and a Notice of termination is given on or before the two hundred tenth (210th) day after SCE files the request for CPUC Approval;
- (ii) If any of the Permits or the CEC Certification and Verification has not been obtained within eighteen (18) months after the Effective Date and a Notice of termination is given on or before the end of the nineteenth (19th) month after the Effective Date;

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- (iii) The Trigger Date has not occurred by December 31, 2010 and a Notice of termination is given on or before January 30, 2011;
- (iv) If the Parties are not able to agree upon a Final ISO4 Transition Plan within one hundred twenty (120) days after the Trigger Date and a Notice of termination is given on or before one hundred fifty (150) days after the Trigger Date;
- (v) If the Parties are not able to agree upon an increase in the Energy Price within ninety (90) days of receipt of Notice from Seller under Section 2.04(a)(v)(1) and the following terms and conditions, and a Notice of termination is given on or before one hundred and twenty (120) days after receipt of Seller's Notice:
 - (1) Seller shall give Notice no later than six (6) months after the Trigger Date if Seller is unable to procure wind turbines for the Generating Facility on commercially reasonable terms to be demonstrated as set forth below. In the event Seller provides a Notice under this Section 2.04(a)(v), Seller must demonstrate that it was unable to procure wind turbines for the Generating Facility on commercially reasonable terms by providing to SCE along with its Notice a certificate from a Turbine Cost Expert certifying that:
 - (a) The Turbine Cost Expert has reviewed (x) the wind turbine cost estimates and assumptions used by Seller in preparing its original bid to SCE with respect to this Agreement submitted on December 2, 2005 (and as modified on December 14, 2005) (the "Estimated Turbine Costs"), and (y) the then-current cost of comparable wind turbines available to Seller from comparable vendors for use in the Generating Facility, as such costs are evidenced by bids or other reasonable documentation received by Seller from comparable wind turbine vendors (the "Current Turbine Costs");
 - (b) The wind turbine vendors whose quotes were used in the Estimated Turbine Costs and the Current Turbine Costs are comparable, high quality, and well respected wind turbine vendors;
 - (c) The wind turbines described in the Estimated Turbine Costs and the Current Turbine Costs are comparable, high quality wind turbines; and

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- (d) The Current Turbine Costs are greater than one hundred five percent (105%) of the Estimated Turbine Costs.
- (2) The Turbine Cost Expert shall use the Turbine Cost Scope Document (as defined below) in making its assessments of the Estimated Turbine Costs and the Current Turbine Costs described in Section 2.04(a)(v)(1) above. In making these assessments of Estimated Turbine Costs and Current Turbine Costs, the Turbine Cost Expert shall consider "total" Wind Turbine cost, including cost of equipment, warranty, transportation, installation and other related costs, and if different Wind Turbine models are used for the Estimated Turbine Cost and Current Turbine Costs, the Turbine Cost Expert shall compare such costs on the basis of expected per kilowatt hour production (i.e., cost/expected kilowatt hour) and not cost per kilowatt of nameplate capacity.
- (3) If the Turbine Cost Expert determines that the Current Turbine Costs are greater than one hundred five percent (105%) of the Estimated Turbine Costs, the Parties shall negotiate in good faith for an increase in the Energy Price to maintain (but not exceed) Seller's expected rate of return modeled in its original bid to SCE with respect to this Agreement submitted on December 2, 2005 (and as modified on December 14, 2005). The Turbine Cost Expert may be consulted by either Party in the determination of a revised Energy Price that is consistent with these provisions. If the Turbine Cost Expert determines that the Current Turbine Costs are not greater than one hundred five percent (105%) of the Estimated Turbine Costs, Seller shall have no right to terminate this Agreement under Section 2.04(a)(v).
- (4) Attached hereto as Exhibit E is the document (excluding pricing information) (the "Turbine Cost Scope Document") which sets forth the scope and categories of turbine costs (i.e., information normally set forth in a bid sheet used to procure wind turbines) used in determining the Estimated Turbine Costs. Seller represents as of the Effective Date that it has in its possession the complete and original pricing information and expected rate of return model used for the Estimated Turbine Costs, the Turbine Cost Scope Document and Seller's original bid to SCE with respect to this Agreement submitted on December 2, 2005 (and as modified on December 14, 2005) (collectively, the "Pricing Information"). Seller

The contents of this document are subject to restrictions on disclosure as set forth herein.

covenants that it shall retain the Pricing Information and shall disclose the Pricing Information if such Pricing Information is requested by the Turbine Cost Expert in connection with the assessments and certifications to be made by the Turbine Cost Expert pursuant to this Section 2.04(a)(v) above; or

- (vi) If the Lender Consent has not been obtained within ninety (90) days after the Effective Date and a Notice of Termination is given on or before the date that is one hundred twenty (120) days after the Effective Date.

(b) Termination Rights of SCE.

- (i) On or before the date that is sixty (60) days after Seller provides to SCE the results of ISO's final determination of interconnection for the Generating Facility and, if applicable, the results of the ISO's or any Transmission Provider's issuance of a final interconnection facilities study for the Generating Facility, SCE shall have the right to terminate this Agreement on Notice which shall be effective five (5) Business Days after such Notice is given in the following circumstances:

- (1) If, as a result of the ISO's or any Transmission Provider's issuance of a final interconnection facilities study for the Generating Facility, the total cost of transmission or distribution upgrades or new transmission or distribution facilities to SCE, that are not reimbursed or paid by Seller, will exceed one million five hundred thousand dollars (\$1,500,000); or
- (2) If the ISO requires SCE to procure transmission service from any other Transmission Provider to allow Seller to deliver or Schedule electric energy to SCE and the total cost for such transmission service is not fully reimbursed or paid by Seller.

(c) Termination Right of Seller.

Seller shall have the right to terminate this Agreement on Notice which shall be effective five (5) Business Days after such Notice is given if the New Metering Infrastructure Costs, as demonstrated in a Notice to SCE given under Section 3.06(e), are greater than \$1,500,000 above the Baseline Infrastructure Costs *provided* that such Notice of Termination must be given by Seller no later than fifteen (15) days after the Parties are unable to resolve the dispute with respect to the New Metering Infrastructure Costs under Section 3.06(e).

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(d) Uncured Defaults.

Upon the occurrence of an Event of Default, the Non-Defaulting Party may terminate this Agreement as set forth in Section 6.02.

(e) End of Term.

At the end of the Term as set forth in Section 1.05, this Agreement shall automatically terminate.

2.05 Rights and Obligations Surviving Termination.

(a) Survival of Rights and Obligations Generally.

The rights and obligations that are intended to survive a termination of this Agreement are all those rights and obligations that this Agreement expressly provides shall survive termination and those which arise from Seller's or SCE's covenants, agreements, representations, and warranties applicable to, or to be performed, at or during any time period prior to or as a result of the termination of this Agreement, including:

- (i) Seller's right of return of any posted Development Security under Section 3.04(c);
- (ii) Seller's obligation to pay the Energy Replacement Damage Amount under Section 3.05(a);
- (iii) The obligation to make a Termination Payment under Section 6.03, if applicable;
- (iv) The indemnity obligations to the extent provided in Section 10.03;
- (v) The obligation of confidentiality set forth in Section 10.10;
- (vi) The right to receive a Termination Payment under Section 6.03, if applicable;
- (vii) The right to pursue remedies under Section 6.02, if applicable;
- (viii) The limitation of damages under Article Seven;
- (ix) The obligation of SCE under Article Four to make payment for Delivered Amounts delivered prior to termination;

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- (x) The obligation of Seller to make payments for ISO Charges, ISO Sanctions and any SCE Penalty that are attributable to Seller's actions or omissions during the Startup Period or the Term (as applicable) pursuant to Section 3.23 and Exhibit S;
- (xi) The covenants and indemnifications regarding the limitations on Seller's and Seller's Affiliates ability to offer, make or agree to third party sales as set forth in Section 2.05(b); and
- (xii) The obligation to maintain Performance Assurance posted as of the termination date under Section 8.02 and the EDR Collateral Amount pursuant to Article Twelve, if applicable.

Notwithstanding the foregoing, the rights and obligations intended to survive a termination of this Agreement prior to the commencement of the Term shall be limited to those set forth in subclauses (i), (iv)-(v), (viii), and (x)-(xii), *provided* that a Party's right to receive, and a Party's obligation to pay, any liabilities that are due and owing as of such termination of this Agreement shall survive the termination.

(b) SCE's Right of First Offer to Sales from the Generating Facility after Certain Terminations of the Agreement.

If Seller terminates the Agreement, as provided in Section 2.04(a)(ii) (but only due to Seller's inability to obtain Permits and not the CEC Certification and Verification), Section 2.04(a)(iii) (but only due to either (i) Seller's failure to execute an interconnection agreement or (ii) the costs and terms of any transmission and interconnection rights are not satisfactory to Seller), Section 2.04(a)(iv), Section 2.04(a)(v), Section 2.04(a)(vi), Section 2.04(c) or Section 5.05 (based upon a Force Majeure as to which Seller is the Claiming Party), or if SCE terminates the Agreement as provided in Section 3.04(b), or if either Party terminates the Agreement pursuant to Section 2.04(a)(vi), neither Seller nor Seller's Affiliates may sell, or enter into an agreement to sell, electric energy, Environmental Attributes, Capacity Attributes, or Resource Adequacy Benefits associated with or attributable to a generating facility installed at the Site to a party other than SCE for a period of two (2) years following the effective date of such termination.

The prohibition on contracting and sale in the preceding sentence shall not apply if, prior to entering into the contract or making a sale to a party other than SCE, Seller or Seller's Affiliates provides SCE with a written offer to sell the electric energy, Environmental Attributes, Capacity Attributes and Resource Adequacy Benefits to SCE on terms and conditions materially

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similar to the terms and conditions contained in this Agreement and SCE fails to accept such offer within forty-five (45) days after SCE's receipt thereof.

Seller shall indemnify and hold SCE harmless from all benefits lost and other damages sustained by SCE as a result of any breach by Seller of its covenants contained within this Section 2.05(b).

**** End of ARTICLE TWO ****

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ARTICLE THREE. SELLER'S OBLIGATIONS

3.01 Conveyance of Entire Output, Conveyance of Environmental Attributes and Capacity Attributes.

Seller shall deliver and convey all Delivered Amounts during the Term to SCE and SCE shall take delivery of the same.

Subject to Section 6.02(c), from the Effective Date through the Term, Seller shall dedicate and convey to SCE any and all Environmental Attributes, Capacity Attributes and Resource Adequacy Benefits generated or produced by, or attributable to, the Generating Facility to SCE and SCE shall be given sole title to all such Capacity Attributes, Environmental Attributes and Resource Adequacy Benefits.

Seller shall, at its own cost, take all reasonable actions and execute all documents or instruments reasonably necessary to effectuate the use of the Capacity Attributes, Environmental Attributes and Resource Adequacy Benefits for SCE's sole benefit from the Effective Date throughout the Term.

Such actions shall include, without limitation:

- (a) Cooperating with and encouraging the regional entity responsible for resource adequacy administration to certify or qualify the Nameplate Contract Capacity for resource adequacy purposes;
- (b) Testing the Generating Facility in order to certify the Nameplate Contract Capacity for resource adequacy purposes;
- (c) Complying with all current and future ISO tariff provisions that address resource adequacy, including provisions regarding performance obligations and penalties; and
- (d) Committing to SCE the full Nameplate Contract Capacity.

Subject to Section 6.02(c), SCE will have the exclusive right, at any time or from time-to-time from the Effective Date through the Term, to sell, assign, convey, transfer, allocate, designate, award, report or otherwise provide any and all such Capacity Attributes, Environmental Attributes or Resource Adequacy Benefits to third parties.

SCE shall be responsible for any costs associated with SCE's accounting for or otherwise claiming Environmental Attributes, Capacity Attributes and Resource Adequacy Benefits.

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Seller shall convey title to and risk of loss of all Delivered Amounts to SCE at the applicable Delivery Point.

Subject to Section 6.02(c), from the Effective Date, Seller shall not sell any Product to any entity other than SCE, except that, in the event of an Extraordinary SCE Force Majeure, Seller may, but shall not be obligated to, sell the electric energy produced by the Generating Facility to a third party but such third party sales may take place only during the period that SCE is not accepting Seller's energy.

3.02 Resource Adequacy Benefits.

From the Effective Date through the Term, Seller grants, pledges, assigns and otherwise commits to SCE the full Nameplate Contract Capacity in order for SCE to meet its resource adequacy obligations under any Resource Adequacy Rulings.

Seller also represents, warrants and covenants to SCE that Seller:

- (a) Has not used, granted, pledged, assigned or otherwise committed; and
- (b) Will not, from the Effective Date through the Term of this Agreement use, grant, pledge, assign or otherwise commit, any portion of the Generating Facility to meet the resource adequacy requirements of, or to confer Resource Adequacy Benefits upon, any entity other than SCE.

3.03 Permits and ISO Agreements.

- (a) Seller shall be responsible for obtaining and maintaining any and all interconnection and transmission service rights and Permits required to effect delivery of the electric energy from the Generating Facility to the Delivery Point.
- (b) Seller shall pay all Transmission Provider costs and any other charges directly caused by, associated with, or allocated to the interconnection of the Generating Facility to the Transmission Provider's electric system, and the delivery of electric energy from Seller's Generating Facility at the Delivery Point.
- (c) Seller shall secure all required ISO agreements, certifications and approvals, including a Participating Generator Agreement and a Meter Service Agreement.
 - (i) Seller's Participating Generator Agreement, Schedule 1, shall:
 - (1) List all generating units as a single aggregated unit; and

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- (2) Indicate that the generating capacity from the Generating Facility is contracted to SCE under a bi-lateral agreement; and
- (ii) Seller's Meter Service Agreement, Schedule 1 shall be consistent with the final Metering Plan.

3.04 Development Security.

(a) Posting the Development Security.

Seller shall post and thereafter maintain a Development Security equal to twenty dollars (\$20) for each kW of proposed nameplate capacity of new Wind Turbines expected to be installed at the Generating Facility ("New Turbine Nameplate Capacity") after the Effective Date. For purposes of determining the amount of Development Security to be posted hereunder, within five (5) days following the Effective Date, Seller shall provide SCE with Notice, which shall include (i) its good faith estimate of the expected Nameplate Contract Capacity of the Generating Facility, including the expected nameplate capacity of existing Wind Turbines at the Generating Facility and the expected New Turbine Nameplate Capacity, and (ii) the corresponding amount of Development Security to be posted. This Notice shall be based upon the Provisional ISO4 Transition Plan and any other information reasonably available to Seller at the time such Notice is given.

One half of the Development Security (based upon Seller's Notice as provided above) shall be posted within thirty (30) days following the Effective Date, with the remainder of such Development Security to be posted within thirty (30) days following CPUC Approval. On or before the date that the Parties agree to the Final ISO4 Transition Plan, as provided in Section 2.02(e), Seller shall provide Notice to SCE advising SCE of the amount, based upon the Final ISO4 Transition Plan, of any proposed New Turbine Nameplate Capacity in addition to the New Turbine Nameplate Capacity covered by Seller's initial Notice (as provided pursuant to the previous paragraph), and shall, within thirty (30) days of such Notice, post and maintain additional Development Security equal to twenty dollars (\$20) for each kW of proposed New Turbine Nameplate Capacity of such additional new Wind Turbines.

The Development Security shall be held by SCE as security for Seller maintaining adequate progress in development of the Generating Facility in accordance with the Milestone Schedule, as set forth in Exhibit G, to meet the Startup Deadline and installing and demonstrating the Nameplate Contract Capacity, including the full New Turbine Nameplate Capacity, by the applicable Firm Operating Period Start Date.

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The Development Security shall be in the form of either a cash deposit or a Letter of Credit.

Any Development Security posted in cash shall bear simple interest at a rate equal to the Federal Funds Effective Rate. The calculation of any such interest shall be determined in accordance with Section 8.02(b) of this Agreement.

If Seller establishes the Development Security by means of a Letter of Credit, such Letter of Credit shall be provided substantially in the form of Exhibit M.

(b) Forfeiture of the Development Security for Failure to Meet Startup Deadline; Extension of the Startup Deadline.

Subject to Seller's right to extend the Startup Deadline as provided in this Section 3.04(b), in the event that the Initial Operating Period Start Date does not or cannot occur on or before the Startup Deadline (including due to any termination of this Agreement as a result of an Event of Default by Seller occurring prior to the Startup Deadline), SCE shall be entitled to retain the entire Development Security and terminate this Agreement (if not already terminated) and, subject to Section 2.05(b), neither Party shall have liability for damages for failure to deliver or purchase Product after the effective date of such termination. Seller may elect to extend the Startup Deadline by paying to SCE Daily Delay Liquidated Damages in an amount equal to \$1,500 for each day (or portion thereof) from and including the Startup Deadline to and excluding the Initial Operating Period Start Date ("Daily Delay Liquidated Damages").

To extend the Startup Deadline, Seller must, at the earliest possible time, but no later than 6 a.m. on the first day of the proposed extension, provide SCE with Notice of its election to extend the Startup Deadline along with its estimate of the duration of the extension and its payment of Daily Delay Liquidated Damages for the full estimated Startup Deadline extension period.

Seller may further extend the Startup Deadline beyond the original Startup Deadline extension period subject to the advance Notice, estimation and payment terms applicable to the original Startup Deadline extension.

The Daily Delay Liquidated Damages payments applicable to days included in any Startup Deadline extension shall be nonrefundable and are in addition to and not to be considered part of the Development Security.

Seller shall be entitled to a refund (without interest) of any estimated Daily Delay Liquidated Damages payments paid by Seller which exceed the amount

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required to cover the number of days by which the Startup Deadline was actually extended.

In no event may Seller extend the Startup Deadline for more than a total of one hundred eighty (180) days by the payment of Daily Delay Liquidated Damages.

Notwithstanding any other provision of this Agreement, SCE's retention of the full Development Security and the receipt of Daily Delay Liquidated Damages under this Section 3.04(b), together with SCE's rights under Section 2.05(b), shall be SCE's sole and exclusive remedy with respect to Seller's failure to cause the Initial Operating Period Start Date to occur on or before the Startup Deadline *provided, however*, that to the extent that any facts giving rise to a failure to cause the Initial Operating Period Start Date to occur on or before the Startup Deadline also independently give rise to a breach of any other provision of this Agreement, SCE may pursue any other remedies available to SCE under this Agreement that do not require payment of money, damages in addition to SCE's retention of the full Development Security and receipt of Daily Delay Liquidated Damages pursuant to this Section 3.04(b); *provided further*, that nothing in this Section 3.04(b) shall limit SCE's right to enforce any obligations that survive termination of this Agreement.

(c) Full Return of Development Security.

The Development Security shall be returned to Seller in accordance with the procedure set forth in Exhibit L in each of the following circumstances:

- (i) Subject to Seller's achievement of Initial Operation by the Startup Deadline or any extended Startup Deadline as provided in Section 3.04(b), Seller demonstrates the full New Turbine Nameplate Capacity in accordance with the procedure set forth in Exhibit L on or before the Firm Operating Period Start Date; or
- (ii) If this Agreement is terminated in accordance with Sections 2.04(a), 2.04(b), 2.04(c) or 5.05; *provided that*, a termination under Section 5.05 shall entitle Seller to a return of the Development Security only if it is based upon a Force Majeure which prevents Seller from achieving Initial Operation by the Startup Deadline or demonstrating full New Turbine Nameplate Capacity by the Firm Operating Period Start Date.

(d) Deficient Installation of New Turbine Nameplate Capacity: Partial Forfeiture and Partial Return of the Development Security.

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If, on or before the Firm Operating Period Start Date, Seller has achieved Initial Operation by the Startup Deadline as provided in Section 3.04(b), but is only able to demonstrate a portion of the full New Turbine Nameplate Capacity in accordance with the procedure set forth in Exhibit L (the "Demonstrated New Turbine Nameplate Capacity") by the Firm Operating Period Start Date,

then Seller shall only be entitled to a return of the portion of the Development Security equal to the product of twenty dollars (\$20) per kW times the number of kW of Demonstrated New Turbine Nameplate Capacity and Seller shall forfeit and SCE shall be entitled to retain the balance of the Development Security that is not refunded to Seller.

In addition, the Nameplate Contract Capacity shall be reduced to the amount of Nameplate Contract Capacity actually demonstrated by Seller in accordance with the procedure set forth in Exhibit L (the "Demonstrated Nameplate Contract Capacity") as of the Firm Operating Period Start Date, and neither Party shall have any liability for failure to purchase or deliver Product associated with or attributable to capacity in excess of the Demonstrated Nameplate Contract Capacity ("Unincluded Capacity");

Neither Seller nor Seller's Affiliates may sell, or enter into an agreement to sell, electric energy, Environmental Attributes, Capacity Attributes or Resource Adequacy Benefits associated with or attributable to Unincluded Capacity from a generating facility installed at the Site to a party other than SCE for a period of two (2) years following SCE's Notice to Seller of its partial forfeiture of the Development Security pursuant to Exhibit L.

The prohibition on contracting and sale in the preceding sentence shall not apply if, prior to entering into the contract or making a sale to a party other than SCE, Seller or Seller's Affiliates provide SCE with a written offer to sell the electric energy, Environmental Attributes, Capacity Attributes and Resource Adequacy Benefits related to Unincluded Capacity to SCE on terms and conditions materially similar to, or no less favorable to SCE than, the terms and conditions contained in this Agreement and SCE fails to accept such offer within forty-five (45) days after SCE's receipt thereof.

3.05 Seller's Annual Energy Delivery Obligation.

- (a) Seller shall be responsible for achieving the appropriate Seller's Annual Energy Delivery Obligation during each Firm Operating Period Year (or portion thereof) and paying the applicable Energy Replacement Damage Amount if an Event of Deficient Energy Deliveries is determined to have

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occurred as set forth in Exhibit F. If an Event of Deficient Energy Deliveries occurs:

- (i) The Parties acknowledge that the damages sustained by SCE associated with Seller's failure to meet Seller's Annual Energy Delivery Obligation would be difficult or impossible to determine, or that obtaining an adequate remedy would be unreasonably time consuming or expensive, and therefore agree that Seller shall pay SCE as liquidated damages the Energy Replacement Damage Amount, which is intended to compensate SCE for Seller's failure to perform, irrespective of whether SCE actually purchased such replacement electric energy by reason of Seller's failure to perform; and
 - (ii) SCE's sole and exclusive remedy with respect to an Event of Deficient Energy Deliveries shall be the receipt of payment of any applicable Energy Replacement Damage Amount; *provided, however*, that to the extent that any facts giving rise to an Event of Deficient Energy Deliveries also independently give rise to a breach of any other provision of this Agreement, SCE may pursue any other remedies available to SCE under this Agreement, including, without limitation a termination remedy, with respect to such independent breach.
- (b) In order to support the calculations to be made pursuant to Exhibit F, Seller shall prepare and provide to SCE, by the twentieth (20th) Business Day following the end of the third Firm Operating Period Year:
- (i) One Generating Facility Performance Model Report for the second Firm Operating Period Year; and
 - (ii) One Generating Facility Performance Model Report for the third Firm Operating Period Year.

Starting with the fourth Firm Operating Period Year, Seller shall prepare and provide to SCE, by the twentieth (20th) Business Day after the end of such Firm Operating Period Year and each Firm Operating Period Year thereafter, a Generating Facility Performance Model Report for the most recent Firm Operating Period Year.

(c) Quarterly Statements of Metered Amounts and Lost Output.

- (i) SCE shall prepare and provide to Seller within thirty (30) days after the end of each calendar quarter during each Calculation Period quarterly statements (each a "Quarterly Statement") showing the sum of Seller's Metered Amounts plus Lost Output for such completed

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- calendar quarter, the pro rata portion of Seller's Energy Delivery Obligation for such calendar quarter and, for informational and not billing purposes, any estimated Energy Replacement Damage Amount (as calculated in accordance with Exhibit F) that has accrued for such Calculation Period as of the end of such calendar quarter. SCE's Quarterly Statement shall be accompanied by a statement of all facts and information relied upon by SCE in formulating its calculation methodologies, including annotated work papers and source data.
- (ii) Seller shall have forty-five (45) days after receipt of a Quarterly Statement to review the statement and provide Notice to SCE of any dispute Seller has with the reported Metered Amounts, Lost Output, pro rata portion of Seller's Energy Delivery Obligation or estimate of Energy Replacement Damage Amount for such Quarterly Statement. Seller's Notice shall include Seller's calculation of the Metered Amounts, Lost Output, pro rata portion of Seller's Energy Delivery Obligation or estimated Energy Replacement Damage Amount for the Calculation Period as of the end of such calendar quarter, and all facts and information relied upon by Seller in formulating its calculation methodologies and claims, including annotated work papers and source data.
 - (iii) Seller shall make a good faith effort to ascertain and include in its Notice any and all disputes that it has with the Quarterly Statement.
 - (iv) The Parties shall negotiate in good faith for a maximum of thirty (30) days to resolve any disputed portion of such Quarterly Statement and shall, as part of such good faith negotiations, promptly provide information or data relevant to the dispute as each Party may possess which is requested by the other Party.
- (d) Energy Replacement Damage Amount.
- (i) Within ninety (90) days after the end of the applicable Firm Operating Period Year, SCE shall calculate any Energy Replacement Damage Amount, and shall provide Notice to Seller of any Energy Replacement Damage Amount owing, including a detailed explanation of, and rationale for, its calculation methodology, annotated work papers and source data.
 - (ii) Seller shall have thirty (30) days after receipt of SCE's Notice to review SCE's calculation and pay the entire Energy Replacement Damage Amount calculated by SCE pursuant to Exhibit F; *provided,*

however if Seller in good faith wishes to dispute any portion of the Energy Replacement Damage Amount, Seller may either:

- (1) Elect to utilize EDR by providing Notice, in accordance with Section 12.03(a)(ii), of its request for EDR within ten (10) days of Seller's receipt of SCE's calculation of the Energy Replacement Damage Amount; or
 - (2) Pay any undisputed portion of the Energy Replacement Damage Amount and provide Notice to SCE of the portion Seller disputes along with a detailed explanation of, and rationale for, Seller's calculation methodology, annotated work papers and source data within the aforementioned thirty (30) day payment period.
- (iii) In the event Seller selects the option under Section 3.06(d)(ii), the Parties shall negotiate in good faith to resolve any disputed portion of the Energy Replacement Damage Amount and shall, as part of such good faith negotiations, promptly provide information or data relevant to the dispute as each Party may possess which is requested by the other Party.

If the Parties are unable to resolve a dispute regarding any Energy Replacement Damage Amount within thirty (30) days after the sending of a Notice of dispute by Seller, either Party may submit the dispute to mediation and/or ADR as provided in Article Twelve.

(e) Continuing Obligations of Seller.

Notwithstanding any payment of an Energy Replacement Damage Amount, an ongoing EDR or ADR proceeding or any dispute regarding a Quarterly Statement, Seller shall remain obligated to convey all electric energy generated by the Generating Facility and all Environmental Attributes and Capacity Attributes to SCE during the Term, as provided in Section 3.01, and Resource Adequacy Benefits as provided in Section 3.02, subject to Section 6.02(c).

3.06 Metering.

(a) ISO Approved Meter(s).

Subject to the conditions set forth below in Section 3.06(e), Seller shall install and pay for any and all metering services and related equipment required by SCE, the ISO, and the Transmission Provider.

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Such equipment shall include, but not be limited to, an ISO-approved revenue quality meter or meters, ISO-approved data processing gateway, telemetering equipment and data acquisition services sufficient for monitoring and recording and reporting, in real time, all electric energy produced by the Generating Facility less Station Use (collectively, the "ISO Approved Meter").

(b) Access to ISO Approved Meter(s).

- (i) Subject to Section 3.17, Seller shall grant SCE reasonable access to the ISO Approved Meter(s) for meter readings and any purpose necessary to effectuate this Agreement.

Seller shall promptly provide SCE access to all meter data both in real-time, and at later times as SCE may reasonably request.

- (ii) Prior to the Initial Operating Period Start Date, Seller shall provide instructions or other documentation to the ISO sufficient to provide SCE with access to the ISO Approved Meter(s) and to Seller's settlement data on OMAR, including but not limited to an authorization letter to the ISO Metadata Access Service to add SCE to Seller's Schedule 3 specifying the authorization to access to ISO meters and Seller's ISO Resource ID in Omar-Online.
- (iii) Seller shall promptly inform SCE of meter quantity changes after being informed of any such changes by the ISO.

(c) ISO Approved Meter Maintenance.

- (i) Seller shall test the ISO Approved Meter, as necessary, but in no event shall the period between testing dates be greater than twenty-four (24) months.
- (ii) Seller shall replace the ISO Approved Meter battery at least once every thirty-six (36) months.
- (iii) Notwithstanding the foregoing, in the event the ISO Approved Meter battery fails, Seller shall replace such battery within one (1) day of its failure.

(d) Retail Metering Requirements.

Subject to the conditions set forth below in Section 3.06(e), Seller also shall install and pay for any and all retail metering equipment required by its retail electrical service provider in accordance with its tariffs.

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(e) Metering Costs Cap and Energy Price Increase.

- (i) If, in order to install any metering equipment required pursuant to Sections 3.06(a) and 3.06(d), Seller would incur costs for metering upgrades, new metering equipment or any other infrastructure to accommodate the configuration of such new metering equipment (including any collection systems or transmission facilities but specifically excluding the costs for any interconnection facilities or any transmission facilities which have a voltage rating above 15 kV) (the "New Metering Infrastructure Costs") that are in excess of the Baseline Infrastructure Costs, then, no later than sixty (60) days after Seller receives a final retail metering study for the Generating Facility from SCE, Seller shall give Notice to SCE of its request for an increase in the Energy Price. Any such requested price increase shall be \$0.81 per MWh per \$250,000 of New Metering Infrastructure Costs (up to a *maximum* of \$1,500,000 of New Metering Infrastructure Costs for the Maximum Nameplate Contract Capacity, or otherwise proportionately reduced based upon the Nameplate Contract Capacity selected by the Seller pursuant to Section 1.01(d)) and shall be pro rated for each \$10,000 of New Metering Infrastructure Costs (i.e., \$0.0324 per MWh per \$10,000 of New Metering Infrastructure Costs). Seller shall not be entitled to any price increase attributable to New Metering Infrastructure Costs in excess of \$1,500,000.
- (ii) In the event Seller provides a Notice under this Section 3.06(e), Seller must demonstrate to SCE's reasonable satisfaction any such New Metering Infrastructure Costs by providing to SCE, along with its Notice, appropriate documentation to substantiate such New Metering Infrastructure Costs, including new metering infrastructure plans, scope documents, one-line diagrams associated with Seller's development of the New Metering Infrastructure Costs and the reasons that such costs exceed the Baseline Infrastructure Costs. The Parties shall negotiate in good faith to resolve any dispute with respect to the New Metering Infrastructure Costs or any requested increase in the Energy Price pursuant to this Section. If the Parties are unable to resolve a dispute within ninety (90) days after SCE's receipt of Notice for an increase in the Energy Price, either Party may submit the dispute to mediation and/or arbitration as provided in Article Twelve.

3.07 Site Control.

- (a) At all times during the Term, Seller shall have Site Control, which means that Seller shall:

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- (i) Own the Site;
 - (ii) Be the lessee of the Site under one or more Leases;
 - (iii) Be the holder of one or more right-of-way grants or similar instruments with respect to the Site; or
 - (iv) Be the managing partner or other person or entity authorized to act in all matters relating to the control and Operation of the Site and Generating Facility.
- (b) Seller shall provide SCE with prompt Notice of any change in the status of Seller's Site Control.
- (c) Seller shall provide SCE with Notice of the status of its Site Control prior to commencing construction of the Generating Facility.

3.08 Site Location.

This Agreement is Site specific as set forth in Section 1.01(b).

3.09 Design.

At no cost to SCE, Seller shall be responsible for:

- (a) Designing and constructing the Generating Facility.
- (b) Using commercially reasonable efforts to acquire all Permits.
- (c) Providing to SCE, at least thirty (30) days prior to the anticipated Initial Operating Period Start Date, the following Generating Facility information:
 - (i) Site plan drawings for the Generating Facility;
 - (ii) Specific identification of each Wind Turbine at the Generating Facility;
 - (iii) Electrical one line diagrams;
 - (iv) Major electrical equipment specifications, including all electric power collection systems specifications;
 - (v) General arrangement drawings;
 - (vi) Longitude and latitude of each generator.

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- (vii) Artist renderings of Site, if any;
 - (viii) Aerial photographs of Site, if any; and
 - (ix) Specifications for each Wind Turbine identified in Section 3.09(c)(ii).
- (d) Providing SCE advance Notice at the earliest practicable time of any proposed changes in Seller's Generating Facility, with such Notice to include the information set forth in Section 3.09(c) above, along with all specifications and drawings pertaining to any such changes.
- (e) Providing to SCE, at least twelve (12) months prior to the anticipated Initial Operating Period Start Date, the design and specifications for all Generating Facility metering systems.

3.10 Operation.

- (a) Seller shall Operate the Generating Facility in accordance with Prudent Electrical Practices.
- (b) Prior to Initial Operation:
 - (i) Seller shall demonstrate to SCE's reasonable satisfaction that Seller has executed all necessary Transmission Provider and ISO agreements;
 - (ii) Seller shall provide to SCE the DLF and TLF, as applicable, used by the Transmission Provider in the administration of any transmission service agreement for the Generating Facility;
 - (iii) Seller has demonstrated to SCE's reasonable satisfaction that Seller has complied with its obligations with respect to the ISO Approved Meter(s) as set forth in Section 3.06(a) and the SCE retail meter(s), as set forth in Section 3.06(d);
 - (iv) Seller shall have furnished to SCE all insurance documents required under Section 10.11(b).
- (c) Seller shall keep a daily operations log for the Generating Facility that shall include information on availability, maintenance outages, circuit breaker trip operations requiring a manual reset, and any significant events related to the Operation of the Generating Facility; *provided* that Seller shall keep such log for only the prior seven (7) year period.

In addition, Seller shall maintain complete records of the Generating Facility's wind speeds and other pertinent meteorological conditions, maintenance

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performed, kilowatts, kilovars and kilowatt-hours generated and settings or adjustments of the generator control equipment and protective devices.

Such information shall be provided or made available to SCE within twenty (20) days after any Notice.

- (d) Seller shall keep a maintenance log for the Generating Facility that shall include information on power production, fuel consumption and efficiency (if applicable), availability, maintenance (both breakdown and preventative) performed, outages, changes in operating status, inspections, manufacturer recommended services and replacement, electrical characteristics of the generators, control settings or adjustments of equipment and protective devices; *provided* that Seller shall keep such log for only the prior seven (7) year period.

Such information shall be kept for the Term of this Agreement and shall be provided or made available to SCE within twenty (20) days after any Notice.

- (e) Seller shall give Notice to SCE of Seller's:
- (i) Forecast of the timing and duration of scheduled maintenance and Seller's forecast of daily Delivered Amounts from the Generating Facility for the following four month period by January 1st, May 1st, and September 1st of each year during the Term;
 - (ii) Forecast of the timing and duration of scheduled maintenance and Seller's forecast of daily Delivered Amounts from the Generating Facility for the following calendar year by September 1 of each year during the Term; and
 - (iii) Unexpected or unscheduled outages by telephoning SCE's Generation Operations Center as soon as practicable, at the telephone number(s) listed in Exhibit C.

With respect to Sections 3.10(e)(i) and 3.10(e)(ii) above, Seller shall have no liability to SCE for damages caused by inaccurate generation forecasts, provided that Seller uses commercially reasonable efforts in developing and submitting such forecasts to SCE.

- (f) Seller shall promptly prepare and provide to SCE upon request all reports of actual or forecasted outages that SCE may reasonably require for the purpose of enabling SCE to comply with Section 761.3 of the California Public Utilities Code or any Applicable Law mandating the reporting by investor-

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owned utilities of expected or experienced outages by facilities under contract to supply electric energy.

- °(g) Commencing upon the date on which all ISO agreements have been executed by Seller and continuing throughout the Term of this Agreement, Seller shall comply with all provisions of the ISO Tariff.

- (h) At least thirty (30) days prior to the commencement of Operation of the Generating Facility in parallel with the Transmission Provider's electric system, Seller shall provide SCE with all facility and metering information as may be requested by SCE, including, but not limited to, the following:

For each ISO Approved Meter:

- (i) Generating Station/Unit ID;
- (ii) ISO Global Resource ID;
- (iii) ISO Approved Meter Device ID;
- (iv) Password;
- (v) Data path (network (ECN) or modem);
- (vi) If modem, phone number;
- (vii) Copy of meter certification;
- (viii) List of any ISO metering exemptions (if any);
- (ix) Description of any compensation calculations such as transformer losses and line losses.

For the Generating Facility:

- (i) Wind Turbine Commissioning Report(s);
- (ii) Utility transmission/distribution one line diagram;
- (iii) Physical location, address or descriptive identification;
- (iv) Latitude and longitude;
- (v) Telephone number on site;
- (vi) Telephone number of control room;

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- (vii) Telephone number for operational issues;
- (viii) Telephone number for administrative issues.
- (i) Upon Notice from SCE, Seller shall promptly curtail the production of the Generating Facility. Such Notice shall be provided to Seller only in the event SCE, as Seller's Scheduling Coordinator, is instructed by the ISO to curtail Seller's Generating Facility in order to respond to an ISO Forecasted Over-Generation Condition, an ISO Declared Over-Generation Condition or an Emergency. SCE shall provide Seller a copy of any written ISO curtailment instruction.

Notwithstanding the foregoing, except as may be required in order to respond to any Emergency, SCE shall:

- (i) Limit the duration of any curtailment order to a maximum of fifteen (15) consecutive hours;
- (ii) Not issue more than one curtailment order during any twenty-four (24) hour period; and
- (iii) Limit the curtailment duration in any Firm Operating Period Year to a maximum of two hundred (200) hours.

3.11 Obtaining Scheduling Coordinator Services.

Seller shall comply with all applicable ISO Tariff procedures, protocol, rules and testing requirements required for SCE to submit SC Schedules for the electric energy produced by the Generating Facility.

- (a) Cooperation with SCE as Scheduling Coordinator.
 - (i) At least thirty (30) days prior to Initial Synchronization, Seller shall take all actions and execute and deliver to SCE all documents necessary to authorize or designate SCE as Seller's Scheduling Coordinator during the period that begins at Initial Synchronization and ends at the Initial Operating Period Start Date ("Startup Period") and throughout the Term of this Agreement.
 - (ii) Seller shall not authorize or designate any other party to act as Scheduling Coordinator, nor shall Seller perform, for its own benefit, the duties of Scheduling Coordinator.
- (b) Replacement of Scheduling Coordinator.

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At least forty-five (45) days prior to the end of the Term, or as soon as practicable before the date of any termination of this Agreement prior to the end of the Term, Seller shall take all actions necessary to terminate the designation of SCE as Seller's Scheduling Coordinator. These actions include, but shall not be limited to:

- (i) Seller shall submit to the ISO a designation of a new Scheduling Coordinator for Seller to replace SCE;
- (ii) Seller shall cause the newly designated Scheduling Coordinator to submit a letter to the ISO accepting the designation; and
- (iii) Seller shall inform SCE of the last date on which SCE will be Seller's Scheduling Coordinator.

3.12 Forecasting.

Seller shall Forecast or cause to be Forecasted the available capacity, in MWs, of the Generating Facility, in accordance with the provisions of Exhibit D.

3.13 Progress Reporting.

Seller shall use commercially reasonable efforts to meet the Milestone Schedule and avoid or minimize any delays in meeting such schedule.

Seller shall provide a monthly written report of its progress toward meeting the Milestone Schedule using the procedures set forth in Exhibit H.

Seller shall include in such report a list of all letters, notices, applications, approvals, authorizations, filings, Permits and licenses relating to any Governmental Authority or the ISO and shall provide any such documents as may be reasonably requested on Notice from SCE.

In addition, Seller shall advise SCE as soon as reasonably practicable of any problems or issues of which it is aware which may materially impact its ability to meet the Milestone Schedule.

3.14 Scheduled Outages.

- (a) No later than five (5) Business Days prior to the date required by the ISO for delivery of schedules for planned outages (which such ISO required delivery dates are currently January 15th, April 15th, July 15th and October 15th of each calendar year during the Term), and at least sixty (60) days prior to Initial Synchronization, Seller shall submit to SCE its schedule of proposed planned outages ("Outage Schedule") for the subsequent twenty four-month

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period using an SCE-provided web-based system ("Web Client"). If Seller fails to submit an Outage Schedule for any period as required under this Section 3.14, then Seller shall not be permitted to schedule or have any planned outages with respect to such period. SCE shall provide Notice to Seller in the event that the ISO changes the ISO required delivery dates for schedules for planned outages. In addition, no later than thirty (30) days prior to October 15 of each year, Seller shall submit to SCE its estimate of its planned outages for the following year.

- (b) Seller shall provide the following information for each proposed planned outage:
 - (i) Start date and time;
 - (ii) End date and time; and
 - (iii) Capacity expected to be online, in MW, during the planned outage.
- (c) Within twenty (20) Business Days after SCE's receipt of an Outage Schedule, SCE shall notify Seller in writing of any reasonable request for changes to the Outage Schedule, and Seller shall, consistent with Prudent Electrical Practices, accommodate SCE's requests regarding the timing of any planned outage.
- (d) Seller shall cooperate with SCE to arrange and coordinate all Outage Schedules with the ISO.
- (e) In the event a condition occurs at the Generating Facility which causes Seller to revise its planned outages, Seller shall provide Notice to SCE, using the Web Client, of such change (including an estimate of the length of such planned outage) as soon as practicable after the condition causing the change becomes known to Seller.
- (f) Seller shall promptly prepare and provide to SCE upon request, using the Web Client, all reports of actual or forecasted outages that SCE may reasonably require for the purpose of enabling SCE to comply with Section 761.3 of the California Public Utilities Code or any Applicable Law mandating the reporting by investor owned utilities of expected or experienced outages by electric energy generating facilities under contract to supply electric energy.

3.15 No Representation by SCE.

Any review by SCE of the design, construction and Operation of the Generating Facility is solely for SCE's information.

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By making such review, SCE makes no representation as to the economic and technical feasibility, operational capability, or reliability of the Generating Facility, or that the Generating Facility complies with Applicable Law or the terms of this Agreement, and Seller shall in no way represent to any third party that any such review by SCE constitutes any such representation. Seller is solely responsible for such matters.

3.16 Provision of Information.

Seller shall promptly provide to SCE copies of:

- (a) All agreements with providers of distribution, transmission or interconnection services for the Generating Facility and all amendments thereto, which may be redacted by Seller to eliminate any portions reasonably believed by Seller to contain confidential information;
- (b) All Permits and applications and approvals relating to the CEC Certification and Verification, or to PIRP;
- (c) All draft, preliminary, final and revised copies of reports, studies and analyses furnished by the ISO, Seller's Transmission Consultant, or any Transmission Provider, and any ISO correspondence related thereto, concerning the transmission of electric energy from the Generating Facility to the Delivery Point; and
- (d) Within thirty (30) days of receiving notification from the Transmission Provider, all notifications of adjustments in the DLF and TLF, as applicable, used by the Transmission Provider in the administration of any transmission service agreement for the Generating Facility.

3.17 SCE's Access Rights.

Upon reasonable notice to Seller, SCE shall have the right of ingress and egress to examine the Site and Generating Facility for any purpose reasonably connected with this Agreement or the exercise of any and all rights of SCE under Applicable Law or its tariff schedules and rules on file with the CPUC. SCE shall comply with all Site safety rules of which Seller has made SCE aware (including, but not limited to, the laws, rules and regulations of the United States government, the State of California and any other bodies, agencies and departments having jurisdiction over the Site) during any such examination and shall indemnify Seller for any claims arising from the conduct of SCE, in violation of any rules of which SCE has been made aware, in accordance with Section 10.03.

3.18 Obtaining and Maintaining CEC Certification and Verification.

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Seller shall take all necessary steps including making or supporting timely filings with the CEC to obtain and maintain CEC Certification and Verification throughout the Term; provided however that:

- (a) This obligation shall not apply to the extent that Seller is unable to obtain or maintain the CEC Certification and Verification using commercially reasonable efforts because of (i) a change in RPS Legislation occurring after the Effective Date, or (ii) a change in Applicable Laws directly impacting CEC Certification and Verification occurring after the Effective Date; and
- (b) The term “commercially reasonable efforts” in Section 3.18(a) of this Agreement shall not require Seller to pay or incur more than fifteen thousand dollars (\$15,000) per year to obtain and maintain such CEC Certification and Verification.

3.19 Notice of Cessation or Termination of Service Agreements.

Seller shall provide Notice to SCE within three (3) Business Days after termination of, or cessation of service under, any agreement necessary for the interconnection to the Transmission Provider’s electric system or transmission of the electric energy to the Delivery Point, for Scheduling to SCE, or for metering the Metered Amounts.

3.20 Lost Output Report; Seller Common Wind Turbine Defect Report.

(a) Provision of Reports; SCE Review.

Commencing on the Initial Operating Period Start Date and continuing throughout the Term, Seller shall prepare and provide to SCE a Lost Output Report by the tenth (10th) Business Day of each month.

SCE shall have thirty (30) days after receipt of Seller’s monthly Lost Output Report to review such report.

Upon SCE’s request, Seller shall promptly provide to SCE any additional data and supporting documentation necessary for SCE to audit and verify any matters in the Lost Output Report or any Seller Common Wind Turbine Defect Report.

(b) Disputes of Lost Output.

If SCE disputes Seller’s Lost Output Report or any Seller Common Wind Turbine Defect Report related to such claim of Lost Output, it shall provide Notice to Seller within thirty (30) days after SCE’s receipt of such report and shall include SCE’s calculations and other data supporting its position.

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The Parties shall negotiate in good faith to resolve any dispute. If the Parties are unable to resolve a dispute within thirty (30) days after SCE's giving the dispute Notice, either Party may submit the dispute to mediation and/or arbitration as provided in Article Twelve.

Seller shall have no right to claim any Lost Output for any month that was not identified in the original Lost Output Report for that month; *provided that*, Seller may supplement the amount of Lost Output claimed ("Supplemental Lost Output") for the month with a supplemental Lost Output Report ("Supplemental Lost Output Report") if Seller can demonstrate that it neither knew nor could it have known through the exercise of reasonable diligence about the Supplemental Lost Output within the foregoing thirty (30) day period and Seller provides the Supplemental Lost Output Report within ten (10) Business Days after learning the facts which provide the basis for the Supplemental Lost Output claim.

3.21 Independent Performance Engineer.

- (a) Seller shall be responsible for generally supporting the Independent Performance Engineer in the development of the:
 - (i) Generating Facility Performance Model;
 - (ii) Generating Facility Performance Model Report; and
 - (iii) Generating Facility Power Curve.
- (b) Seller's responsibilities shall include, but are not necessarily limited to:
 - (i) Submitting its designs and specifications for the Meteorological Equipment to SCE for review and approval (which approval shall not be unreasonably withheld or delayed), and the Independent Performance Engineer for review and comment eighteen (18) months before the expected Initial Operating Period Start Date;
 - (ii) Submitting copies of data sheets for the actual Meteorological Equipment purchased by Seller to SCE and the Independent Performance Engineer as soon as practicable;
 - (iii) Submitting its procedures for the collection of Actual Site Wind Speeds data to SCE for review and approval (which approval shall not be unreasonably withheld or delayed) and the Independent Performance Engineer eighteen (18) months before the expected Initial Operating Period Start Date;

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- (iv) Submitting its procedures for the maintenance and calibration of the Meteorological Equipment to SCE for review and approval (which approval shall not be unreasonably withheld or delayed), and the Independent Performance Engineer for review and comment six (6) months before the expected Initial Operating Period Start Date;
- (v) Submitting a procedure for tracking of wind turbine availability to SCE for review and approval (which approval shall not be unreasonably withheld or delayed) and the Independent Performance Engineer for review and comment eighteen (18) months before the expected Initial Operating Period Start Date;
- (vi) Providing data collected during the operation of the Generating Facility during the first, second and third Firm Operating Period Years to the Independent Performance Engineer, including:
 - (1) Weather conditions, including but not necessarily limited to, wind speed, wind direction, relative humidity, barometric pressure and rain fall;
 - (2) Lost Output Report; and
 - (3) Wind Turbine availability;
- (vii) Providing the Independent Performance Engineer with access to Seller's:
 - (1) Generating Facility;
 - (2) Generating Facility construction contractor;
 - (3) Generating Facility Operators;
 - (4) Wind Turbine manufacturer's representatives; and
 - (5) Wind resource expert;
- (viii) Providing the Independent Performance Engineer with the manufacturer's specifications, data sheets, performance characteristics and power curves for the Wind Turbine generators;
- (ix) Providing the Independent Performance Engineer with design drawings and engineering specifications for the Generating Facility, including:

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- (1) Site plan drawings;
- (2) Topographic maps; and
- (3) Electrical one-line diagrams;

- (x) Providing the Independent Performance Engineer with a copy of the Final Wind Report and any updates;
- (xi) Reviewing and commenting on the design criteria for the development of the Generating Facility Power Curve;
- (xii) Reviewing and commenting on the design criteria for the development of the Generating Facility Performance Model;
- (xiii) Reviewing and commenting on the Generating Facility Power Curve;
- (xiv) Reviewing and commenting on the Generating Facility Performance Model; and

- (c) Providing Generating Facility access to the Independent Performance Engineer.

3.22 Meteorological Station and Reporting Requirements.

Prior to commencement of the Term, Seller, at its own expense, shall install and maintain a stand-alone meteorological station at the Generating Facility (“Meteorological Station”) to monitor and report weather data to both the ISO and the existing SCE weather station data collection system.

The Meteorological Station shall be installed at least sixty (60) days before the date on which the Term is expected to commence and shall be equipped with instruments and equipment (“Meteorological Equipment”) that meet those specifications set forth in Exhibit Q.

The Meteorological Station shall be designed to collect and record data in accordance with ISO Eligible Intermittent Resources Protocol (“ISO EIRP”) 4. Data reports shall be formatted in a manner consistent with the ISO requirements published on the ISO internet home page.

Telemetry equipment shall be designed to function in accordance with ISO EIRP 3. The Meteorological Station shall be equipped to measure and record the minimum data required by the ISO, in the manner specified by the ISO.

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Seller shall submit to SCE for review and approval (which approval shall not be unreasonably withheld or delayed) its technical specification for the Meteorological Station along with a site plan showing the location of the Meteorological Station, the location of all Wind Turbines and the wind rose for the Site.

If SCE reasonably concludes that the Meteorological Station does not provide sufficient data to accurately forecast the Generating Facility's Metered Amounts, Seller shall install, at Seller's expense, an additional meteorological station at another Generating Facility location in accordance with the technical and Scheduling requirements established by the ISO.

3.23 ISO Charges, ISO Sanctions and SCE Penalties.

(a) Startup Period.

During the Startup Period, Seller shall be responsible for all ISO Charges and ISO Sanctions, if any, attributable to or assessed for energy delivered by Seller to the real-time market.

(b) After Initial Operating Period Start Date.

(i) Commencing upon the Initial Operating Period Start Date and continuing throughout the Term, Seller shall have no responsibility for ISO Charges attributable to or assessed for energy delivered by Seller to SCE.

(ii) For any Settlement Interval in which Seller is not eligible for the benefits of PIRP due to Seller's own conduct, as provided in Exhibit S, in the event Seller fails to comply with the availability forecasting provisions set forth in Exhibit D or any ISO Tariff or ISO directives as required under Exhibit S, Seller may be liable to pay an SCE Penalty and/or ISO Sanction, each as set forth in Exhibit S, which shall be SCE's sole and exclusive remedy for such failure to comply.

(c) If Seller disputes any ISO Charge or ISO Sanction, Seller shall provide Notice to SCE of such dispute within five (5) Business Days of becoming aware of such ISO Charge or ISO Sanction.

3.24 Actual Availability Report.

(a) Commencing upon the Initial Operating Period Start Date and continuing throughout the Term, Seller shall prepare and provide to SCE a report with the Settlement Interval Actual Available Capacity of the Generating Facility (an "Actual Availability Report") for each month. Such report shall be in the

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form set forth in Exhibit T and shall be delivered to SCE no later than the seventh (7th) Business Day following the end of the month which is the subject of the Actual Availability Report.

- (b) Upon SCE's reasonable request, Seller shall promptly provide to SCE any additional data and supporting documentation necessary for SCE to audit and verify any matters set forth in the Actual Availability Report.

**** End of ARTICLE THREE ****

The contents of this document are subject to restrictions on disclosure as set forth herein.

ARTICLE FOUR. SCE'S OBLIGATIONS

4.01 Obligation to Pay.

For Seller's *full* compensation under this Agreement, SCE shall make monthly Energy Payments to Seller beginning on the Initial Operating Period Start Date and for the duration of the Term calculated in the manner described in Section 4.04(a);

provided, however, SCE shall not be obligated to pay Seller under this Agreement for any electric energy prior to the commencement of the Term or any electric energy that is not delivered as a result of any circumstance, including, without limitation:

- (a) An outage of the Generating Facility;
- (b) A Force Majeure under Article Five;
- (c) A reduction or curtailment of Delivered Amounts ordered by the ISO; or
- (d) A reduction or curtailment of Delivered Amounts pursuant to the terms of an agreement with a Transmission Provider.

4.02 [Intentionally Omitted].

4.03 [Intentionally Omitted].

4.04 Payment Calculations.

- (a) Monthly Energy Payment Calculation.

Energy Payments shall be based upon Delivered Amounts. For the purpose of calculating monthly Energy Payments, Delivered Amounts shall be time-differentiated according to the relevant TOD Periods set forth in Exhibit K and the pricing shall be weighted by the Energy Payment Allocation Factors set forth in Exhibit K.

As set forth in Exhibit K, TOD Periods for the winter season shall be mid-peak, off-peak and super off-peak and TOD Periods for the summer season shall be on-peak, mid-peak and off-peak.

Each monthly Energy Payment shall equal the sum of the monthly TOD Period Energy Payments for all TOD Periods in the month, calculated pursuant to the following formula:

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$$\begin{aligned} & \text{Monthly Energy Payment in dollars (\$)} = \\ & \text{TOD Period Energy Payment}_{1^{\text{st}} \text{ TOD Period}} + \\ & \text{TOD Period Energy Payment}_{2^{\text{nd}} \text{ TOD Period}} + \\ & \text{TOD Period Energy Payment}_{3^{\text{rd}} \text{ TOD Period}} \end{aligned}$$

The "1st TOD Period," "2nd TOD Period," and "3rd TOD Period" subscripts, used in the formula above, refer to the three TOD Periods that apply for the calculation month, as set forth in Exhibit K. All TOD Period Energy Payments shall be calculated as set forth in Section 4.04(b).

(b) **TOD Period Energy Payment Calculation.**

The TOD Period Energy Payment for any TOD Period shall be calculated pursuant to the following formula:

$$\begin{aligned} & \text{TOD PERIOD ENERGY PAYMENT, in dollars (\$)} \\ & = A \times B \times C \end{aligned}$$

Where:

- A = The sum of the Delivered Amounts in all hours for the TOD Period being calculated, in kWh.
- B = Energy Price specified in Section 1.06, calculated in \$/kWh (i.e., \$/MWh/1000).
- C = Energy Payment Allocation Factor, as specified in Exhibit K, for the TOD Period being calculated.

4.05 Payment and Payment Adjustments.

- (a) No later than thirty (30) days after the end of each calendar month during Initial Synchronization and the Term (or the last day of the month if the month is February), or the last Business Day of the month if such 30th day (or 28th or 29th day for February) is a weekend day or holiday, during which Delivered Amounts are provided to SCE; ISO Charges, ISO Sanctions or any SCE Penalties are incurred; or payment adjustments are made as set forth below, SCE shall do each of the following:

- (i) Send a statement to Seller showing:

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- (1) The sum of the ISO Charges and credits that are directly assigned by the ISO to the ISO Global Resource ID(s) for the Generating Facility for energy delivered to the real-time market during the Startup Period, which will be available approximately one hundred twenty (120) days following the last day of a calendar month (for electrical deliveries during that month) or thirty (30) days after the ISO final settlement data is available to SCE for such deliveries, whichever is sooner;
 - (2) The Metered Amounts for each TOD Period during the month for which the payment is being made;
 - (3) A calculation of the amount payable to Seller for the month pursuant to Section 4.04;
 - (4) The ISO Charges (pursuant to Section 3.23) and the ISO Sanctions and SCE Penalties pursuant to Exhibit S, which will be available approximately one hundred twenty (120) days following the last day of a calendar month (for electrical deliveries during that month) or thirty (30) days after the ISO final settlement data is available to SCE for such deliveries, whichever is sooner; and
 - (5) A calculation of the net amount due Seller.
- (ii) Send to Seller, via wire transfer, SCE's payment of said net amount, plus simple interest at the Interest Rate for each day or portion thereof that the payment is wire-transferred later than such date.
- (b) In the event SCE determines that:
- (i) The ISO has recalculated ISO Charges or credits for energy delivered to the real-time market during the Startup Period; or
 - (ii) A calculation of Metered Amounts for any purpose hereunder is incorrect as a result of inaccurate meters or the correction of data by the ISO in OMAR, SCE shall promptly recompute Metered Amounts for the period of the inaccuracy based upon an adjustment of inaccurate meter readings in accordance with the ISO Tariff.

SCE shall also promptly recompute any payment affected by the inaccuracy. Any amount due from SCE to Seller, or Seller to SCE, as the case may be,

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shall be made as an adjustment to the next monthly payment statement that is calculated after SCE's recomputation using corrected measurements.

In the event that the recomputation results in a net amount owed to SCE after netting any amounts owing to Seller as shown on the next monthly statement, any such additional amount still owing to SCE shall be netted against any amounts owed to Seller on Seller's next monthly payment statement.

At SCE's discretion, SCE may net any remaining amount owed SCE in any subsequent monthly payments to Seller or invoice Seller for such amount, in which case Seller must pay the amount owing to SCE within twenty (20) days after receipt of such invoice.

SCE may make payment adjustments arising from a recalculation of ISO Charges, ISO Sanctions or SCE Penalties or as a result of inaccurate meters after the end of the Term provided that the Parties shall be deemed to have waived any such payment adjustments which are not communicated as provided in this Section 4.05 within twenty-eight (28) months from the end of the Term.

Adjustment payments for meter inaccuracy shall not bear interest.

(c) Netting Rights.

Each Party reserves the right to net against amounts that would otherwise be due to the other Party under this Agreement any amounts owing and unpaid by such other Party to such reserving Party under this Agreement, subject to the limitations on netting rights under Section 12.03(a)(iv)(b). Nothing in this Section 4.05 shall limit either Party's rights under applicable tariffs, other agreements or Applicable Law.

(d) Except as provided in Section 4.05(b) and as otherwise provided in this Section 4.05(d), if within forty-five (45) days after receipt of SCE's payment statement, Seller does not give Notice to SCE of an error,

then Seller shall be deemed to have waived any error in SCE's payment statement, computation and payment, and the payment statement shall be conclusively deemed correct and complete;

provided, however, that if an error is identified by Seller as a result of settlement, audit or other information provided to Seller by the ISO after the expiration of the original forty-five (45) day period, Seller shall have an additional forty-five (45) days from the date on which it receives the

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information from the ISO in which to give Notice to SCE of the error identified by such settlement, audit or other information.

If Seller identifies an error in Seller's favor and SCE agrees that the identified error occurred, SCE shall reimburse Seller for the amount of the underpayment caused by the error and apply the additional payment to the next monthly payment statement that is calculated.

If Seller identifies an error in SCE's favor and SCE agrees that the identified error occurred, SCE may net the amount of overpayment caused by the error against amounts otherwise owed to Seller in connection with the next monthly payment statement that is calculated.

Late payments to Seller resulting from SCE's errors, or overpayments to Seller by SCE, shall bear simple interest at the Interest Rate from the date due (or, in the case of overpayments by SCE, commencing five (5) Business Days from the date SCE provides Notice of such overpayments to Seller) until paid;

provided, however, that changes made because of settlement, audit or other information provided by the ISO and not available to SCE when it rendered its original payment statement shall not bear interest.

In the event that the recomputation results in a net amount still owing to SCE after netting any amounts owed to Seller, the next monthly payment statement shall show a net amount owing to SCE.

At SCE's discretion, SCE may net this net amount owed to SCE against any amounts owed to SCE in any subsequent monthly payment statements to Seller or invoice Seller for such amount, in which case Seller must pay the amount owing to SCE within twenty (20) days after receipt of such invoice.

In the event that either Party disputes in good faith a payment or claimed errors in a payment statement, such Party may elect to utilize EDR by providing a Notice of request for EDR within ten (10) days after receipt of the disputed statement, in accordance with Section 12.03(a)(ii).

4.06 SCE as Scheduling Coordinator.

Commencing on Initial Synchronization, SCE shall act as Scheduling Coordinator (without receiving any remuneration for such services other than as set forth in Section 4.07(a)), on behalf of Seller, and shall submit bids and Schedules to the ISO in accordance with ISO Tariff protocols.

(a) Duties of Scheduling Coordinator.

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- (i) SCE shall submit all notices and updates required under the ISO Tariff regarding the Generating Facility's status to the ISO.
 - (ii) During the Startup Period, SCE shall forward to Seller, within sixty (60) days of receipt, all ISO revenues (including credits and other payments) incurred or received as a result of providing Scheduling Coordinator services, including costs and revenues associated with ISO dispatches.
 - (iii) In the event SCE believes that any ISO Sanction is incorrect and disputable under the ISO Tariff (with respect to which SCE shall provide Notice to Seller containing information of its dispute) or upon Notice by Seller of any dispute of an ISO Sanction, SCE shall dispute any such ISO Sanction in accordance with the procedures set forth under the ISO Tariff.
- (b) Termination of Scheduling Coordinator.

SCE shall submit a letter to the ISO identifying the date on which SCE resigns as Seller's Scheduling Coordinator, on the first to occur of either:

- (i) Thirty (30) days prior to the end of the Term; or
- (ii) The date of any early termination of this Agreement.

4.07 ISO Charges.

- (a) Except as set forth in Section 3.23 and Exhibit S, SCE shall (i) be responsible for ISO Charges; and (ii) receive all ISO revenues (including credits and other payments) incurred or received as a result of providing Scheduling Coordinator services or attributable to generation from the Generating Facility, including costs and revenues associated with ISO dispatches.
- (b) To the extent that SCE requires Seller to participate in the PIRP program, SCE shall be responsible for all costs associated therewith.

4.08 Independent Performance Engineer.

SCE shall:

- (a) Select and contract for the service of the Independent Performance Engineer (who shall develop the Generating Facility Performance Model in accordance with Exhibit O);

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- (b) Review and approve the design criteria for the development of the Generating Facility Power Curve;
- (c) Review and approve the design criteria for the development of the Generating Facility Performance Model;
- (d) Provide Metered Amounts data for the first, second and third Firm Operating Period Years;
- (e) Review and approve the Generating Facility Performance Model; and
- (f) Cause the Independent Performance Engineer to (i) promptly provide Seller with copies of all models or reports for the Generating Facility developed or produced by the Independent Performance Engineer for the Generating Facility, including, the Generating Facility Performance Model, the form of Generating Facility Performance Model Report and the Generating Facility Power Curve, and (ii) consider reasonable comments of Seller and its advisers with regard to all such models and reports.

If Seller has a Dispute with the Independent Performance Engineer or SCE with respect to the Generating Facility Performance Model or form of Generating Facility Performance Model Report or Generating Facility Power Curve, such Dispute shall first be submitted for resolution to a third-party independent engineer mutually selected and paid for by the Parties. If such third-party independent engineer is unable to resolve the Dispute within sixty (60) days, then the Dispute shall be submitted to the senior management of the Parties for resolution. If such senior management are unable to resolve the Dispute, then the Parties shall resolve such Dispute through the arbitration procedures set forth in Section 12.03. Should any of the Generating Facility Performance Model, the form of Generating Facility Performance Model Report or the Generating Facility Power Curve be the subject of a Dispute, the relevant model or report shall not be implemented for purposes of this Agreement until such Dispute has been resolved.

4.09 SCE Obligations Affecting Seller's Annual Energy Delivery Obligation.

SCE shall:

- (a) Review and approve Seller's designs and specifications for the Meteorological Equipment (which approval shall not be unreasonably withheld or delayed);
- (b) Review and approve Seller's plan for collecting Actual Site Wind Speed data (which approval shall not be unreasonably withheld or delayed);

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- (c) Review and approve Seller's procedures for maintenance and calibration of the Meteorological Equipment (which approval shall not be unreasonably withheld or delayed); and
- (d) Review and approve Seller's procedure for tracking Wind Turbine availability (which approval shall not be unreasonably withheld or delayed).

4.10 Support for Qualification of PTCs.

SCE shall use commercially reasonable efforts to support any efforts of the Seller and its Affiliates to qualify the Generating Facility for PTCs.

**** End of ARTICLE FOUR ****

The contents of this document are subject to restrictions on disclosure as set forth herein.

ARTICLE FIVE. FORCE MAJEURE

5.01 No Default for Force Majeure.

Neither Party shall be considered to be in default in the performance of any of its obligations set forth in this Agreement, except for obligations to pay money, when and to the extent failure of performance is caused by Force Majeure.

5.02 Requirements Applicable to the Claiming Party.

If a Party, because of Force Majeure, is rendered wholly or partly unable to perform its obligations when due under this Agreement, that Party (the "Claiming Party"), shall be excused from whatever performance is affected by the Force Majeure to the extent so affected.

In order to be excused from its performance obligations hereunder by reason of Force Majeure:

- (a) The Claiming Party, within fourteen (14) days after the initial occurrence of the claimed Force Majeure, must give the other Party Notice describing the particulars of the occurrence; and
- (b) The Claiming Party must provide timely evidence reasonably sufficient to establish that the occurrence constitutes Force Majeure as defined in this Agreement. In the event of a claim of Force Majeure due in whole or in part to a Common Wind Turbine Defect, such evidence shall include a Seller Common Wind Turbine Defect Report for the claimed Common Wind Turbine Defect.

The suspension of the Claiming Party's performance due to Force Majeure shall be of no greater scope and of no longer duration than is required by the Force Majeure.

In addition, the Claiming Party shall use commercially reasonable and diligent efforts to remedy its inability to perform.

This section shall not require the settlement of any strike, walkout, lockout or other labor dispute on terms which, in the sole judgment of the Claiming Party, are contrary to its interest.

It is understood and agreed that the settlement of strikes, walkouts, lockouts or other labor disputes shall be at the sole discretion of the Claiming Party.

When the Claiming Party is able to resume performance of its obligations under this Agreement, the Claiming Party shall give the other Party prompt Notice to that effect.

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5.03 Startup Deadline Extension.

If Force Majeure occurs prior to the Startup Deadline which prevents Seller from achieving the Startup Deadline, *then* the Startup Deadline shall, subject to Seller's compliance with its obligations as the Claiming Party under Section 5.02, be extended on a day-for-day basis for the duration of the Force Majeure.

5.04 Firm Operating Period Start Date Extension.

If Force Majeure occurs at any time after commencement of the Term, but prior to the Firm Operating Period Start Date, which prevents Seller from demonstrating the Nameplate Contract Capacity as provided in Sections 3.04(c) or 3.04(d),

then the Firm Operating Period Start Date shall, subject to Seller's compliance with its obligations as the Claiming Party under Section 5.02, be extended on a day-for-day basis for the duration of the Force Majeure.

5.05 Termination.

Either Party may terminate this Agreement on Notice, which shall be effective five (5) Business Days after such Notice is provided, in the event of Force Majeure which materially and adversely affects the operations of such Party and extends for more than three hundred sixty-five (365) consecutive days ("One-Year Force Majeure Period");

provided, however, so long as the Claiming Party can demonstrate to the reasonable satisfaction of the other Party, at least one hundred and eighty (180) days before the expiration of the One Year Force Majeure Period, that the Claiming Party has a plan to remedy and terminate the Force Majeure event within one hundred eighty (180) consecutive days following the expiration of the One-Year Force Majeure Period, and the Claiming Party has, in the reasonable determination of the other Party, been making commercially reasonable efforts to comply with its plan throughout the Force Majeure event, then neither Party shall have the right to terminate this Agreement under this Section 5.05 unless the Claiming Party fails to remedy and terminate the Force Majeure event within the one hundred and eighty (180) day period following expiration of the One Year Force Majeure Period.

*** *End of ARTICLE FIVE* ***

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ARTICLE SIX. EVENTS OF DEFAULT; REMEDIES

6.01 Events of Default.

An "Event of Default" shall mean, with respect to a Defaulting Party, the occurrence of any of the following:

- (a) Any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made or repeated if the representation or warranty is continuing in nature, if:
 - (i) Such misrepresentation or breach of warranty is not remedied within five (5) Business Days after Notice; or
 - (ii) Such inaccuracy is not capable of a cure, but the non-breaching Party's damages resulting from such inaccuracy can reasonably be ascertained and the payment of such damages is not made within ten (10) Business Days after a Notice of such damages is provided by the non-breaching Party to the breaching Party;

provided that, any breach of Seller's representation and warranty under Section 10.02(c) (i) and (iii) deemed to be made after the Effective Date shall constitute an Event of Default only under the circumstances set forth in Section 6.01(i) below.

- (b) The failure to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default or to the extent excused by a Force Majeure) if such failure is not remedied within thirty (30) days after Notice of such failure (or such shorter period as may be specified below), which Notice sets forth in reasonable detail the nature of the failure;

provided that, if such failure is not reasonably capable of being cured within the thirty (30) day cure period specified above, the Party shall have such additional time (not exceeding an additional one hundred twenty (120) days) as is reasonably necessary to cure such failure, so long as such Party promptly commences and diligently pursues such cure;

- (c) A Party fails to:
 - (i) make when due any payment in a material amount (including not making when due any material portion of a payment) required under this Agreement and any such failure is not cured within five (5) Business Days after Notice; or

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- (ii) post the Development Security, pursuant to Section 3.04;
- (d) The failure of such Party to satisfy the creditworthiness and collateral requirements in Article Eight and such failure is not cured within ten (10) Business Days after Notice of such failure;
- (e) Such Party becomes Bankrupt;
- (f) Such Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of such Party under this Agreement to which it or its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to the other Party;
- (g) With respect to Seller's Guarantor, if applicable:
 - (i) If any representation or warranty made by a Guarantor in connection with this Agreement is false or misleading in any material respect when made or when deemed made or repeated if the representation or warranty is continuing in nature and the misrepresentation or breach of warranty is not remedied within five (5) Business Days after Notice;
 - (ii) The failure of a Guarantor to make any payment required or to perform any other material covenant or obligation in any guaranty made in connection with this Agreement and such failure shall not be remedied within three (3) Business Days after Notice;
 - (iii) A Guarantor becomes Bankrupt;
 - (iv) The failure of a Guarantor's Guaranty Agreement to SCE to be in full force and effect for purposes of this Agreement (other than in accordance with its terms);
 - (v) A Guarantor repudiates, disaffirms, disclaims, or rejects, in whole or in part, or challenges the validity of any Guaranty Agreement given to SCE;
 - (vi) The occurrence and continuation of a default, event of default or other similar condition or event with respect to Guarantor under one or more agreements or instruments, individually or collectively, relating to indebtedness for borrowed money in the aggregate amount of not less than the Cross Default Amount, which results in such indebtedness

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- becoming, or becoming capable at such time of being declared, immediately due and payable; or
- (vii) The occurrence and continuation of a default, event of default or other similar condition or event with respect to Guarantor under one or more agreements or instruments, individually or collectively, in making on the due date therefore one or more payments, individually or collectively, in the aggregate amount of not less than the Cross-Default Amount.
 - (h) With respect to Seller, if at any time during the Term:
 - (i) Seller does not own the Generating Facility or otherwise have the authority over the Generating Facility as required in Section 3.07(a);
 - (ii) Seller has not cured a failure with respect to Section 3.07(a) within the earlier of (a) thirty (30) days of the occurrence of an event which results in such failure and which results in a material adverse change in Seller's ability to own or operate the Generating Facility on the Site, (b) thirty (30) days after providing the Notice in accordance with Section 3.07(b) or (c) ninety (90) days after the occurrence of the event which results in such failure but which does not result in a material adverse change in Seller's ability to own or operate the Generating Facility on the Site;
 - (iii) Seller fails to provide SCE with evidence that the indebtedness incurred with respect to any Restricted Financing has received a credit rating of "B" (or the equivalent) or better from S&P or Moody's at the time of incurrence of such Restricted Financing, *provided* that, if Seller has previously provided a credit rating to SCE hereunder with respect to a Restricted Financing, Seller must, to avoid an Event of Default hereunder, provide to SCE a credit rating from the same credit rating agency (i.e., S&P or Moody's) for any subsequent Restricted Financing;
 - (iv) Notwithstanding the payment of any Energy Replacement Damage Amount, the Metered Amounts plus Lost Output in any consecutive six (6) month period are not at least ten percent (10%) of the Seller's Annual Energy Delivery Obligation set forth in Section 3.04, and Seller fails to demonstrate to SCE's reasonable satisfaction, within ten (10) Business Days after Notice from SCE, a legitimate reason for such failure;

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- (v) Seller intentionally or knowingly delivers, or attempts to deliver at the Delivery Point for sale under this Agreement electric energy that was not in fact generated by the Generating Facility;
 - (vi) Seller installs Generating Facility Capacity in excess of the Nameplate Contract Capacity and attempts to sell or does sell the output of such excess capacity to SCE, and such Generating Facility Capacity is not removed within five (5) Business Days after Notice from SCE; or
 - (vii) Seller removes from the Site equipment upon which the Nameplate Contract Capacity has been based, except for the purposes of replacement, refurbishment, repair or maintenance, and such equipment is not returned within five (5) Business Days after Notice from SCE;
- (i) If at any time during the Term:
- (i) The Generating Facility fails to qualify as an ERR; or
 - (ii) Any electrical output from the Generating Facility sold or to be sold to SCE hereunder fails to qualify as output from an ERR;

provided, however, that an Event of Default shall not have occurred with respect to Section 6.01(i)(i) and Section 6.01(i)(ii) above if the failure to qualify results from an amendment or modification after the Effective Date of:

- (iii) The RPS Legislation; or
 - (iv) Other Applicable Laws directly precluding the Generating Facility from being classified as an ERR or directly preventing the qualification of the Generating Facility's electrical output as output from an ERR, and Seller has used commercially reasonable efforts under Section 3.18 to obtain CEC Certification and Verification;
- (j) Seller fails to take any actions necessary to effectuate the use of Resource Adequacy Benefits for SCE's sole benefit as specified in Section 3.01.
- (k) Seller fails to achieve Initial Operation within the timeframes set forth in Section 2.03(b) and such failure is not cured within ten (10) Business Days after Notice from SCE;
- (l) With respect to Seller, termination of, or cessation of service under, any agreement necessary for the interconnection of the Generating Facility to the Transmission Provider's electric system or transmission of the electric energy to the Delivery Point, for Scheduling to SCE, or for metering the Metered

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Amounts and such service is not reinstated, or alternative arrangements implemented, within one hundred and twenty (120) days after such termination or cessation; or

- (m) Seller defaults under any Security Document and such default is not cured within the applicable cure period, if any, set forth in such Security Document, or Seller repudiates, disaffirms, disclaims, or rejects, in whole or in part, or challenges the validity of, any of the Security Documents.

6.02 Early Termination.

- (a) If an Event of Default shall have occurred, there will be no opportunity for cure except as specified in Section 6.01 or in Section 6.02(c).
- (b) The Party taking the default (the "Non-Defaulting Party") shall have the right:
 - (i) To designate, by Notice, a day, no earlier than twenty (20) calendar days after the Notice is effective, as an "Early Termination Date;"
 - (ii) To immediately suspend performance under the Agreement; and
 - (iii) To pursue all remedies available at law or in equity against the Defaulting Party (including monetary damages), except to the extent that such remedies are limited by the terms of this Agreement.
- (c) Upon the occurrence and continuation of an Event of Default by SCE under Section 6.01(c), or upon the initiation by SCE of EDR with respect to Notice by Seller to SCE of default by SCE under Section 6.01(c), Seller shall have the right, but not the obligation, to mitigate the damages caused by SCE due to such Event of Default, in accordance with the procedure set forth in this Section 6.02(c). In no way shall the exercise by Seller of the foregoing mitigation rights constitute a waiver by SCE of any of its rights, claims or defenses hereunder, including any claim that Seller's exercise of its mitigation rights is improper.

Should Seller elect to mitigate its damages, it shall provide Notice to SCE of its election from any date after the date of such Notice ("Election Date") and may sell all electrical energy, electrical generating capacity, Environmental Attributes or Resource Adequacy Benefits from the Generating Facility to one or more third parties on such terms and conditions as Seller, in its sole discretion, may elect. No such sale shall constitute a breach by Seller hereunder solely because such sale was made.

If Seller elects to mitigate its damages as provided in this Section 6.02(c), Seller may only designate an Early Termination Date based upon the Event of Default which was the basis for the election if SCE fails to send a Notice designating an Intended Cure Date within ninety (90) days after the Election Date.

Upon receipt by Seller of a Notice from SCE that SCE intends to cure the payment Event of Default (which Notice shall include the date of the proposed cure) (herein, the "Intended Cure Date"), Seller shall promptly prepare and provide a statement to SCE which sets forth:

- (i) The original outstanding amount that triggered the Event of Default plus simple interest on such amount at the Interest Rate (the "Default Amount"); and
- (ii) To the extent then calculable, a good faith estimate of:
 - (1) the difference between:
 - (I) The greater of (i) amounts actually received or to be received by Seller from the sale of any Product from the Generating Facility beginning on the Election Date through the Estimated Restart Date, or (ii) reasonable market prices for the sale of any such Product for the term of the actual sale; and
 - (II) the Energy Price which would have been received by Seller from SCE under this Agreement through such period, and
 - (2) fees, expenses and charges which Seller has reasonably incurred or will reasonably incur in connection with its mitigating sales in accordance with this Section (collectively, the amounts set forth in subclauses (a) and (b), the "Cover Damages"); *provided that* Seller shall be solely responsible for, and shall not include as part of its estimate of Cover Damages, any fees, costs, expenses and charges that it may incur to terminate, liquidate or wind up any mitigating transaction entered into by Seller for a term exceeding thirty (30) days.

SCE shall pay to Seller on the Intended Cure Date an amount equal to the estimated Default Amount plus the estimated Cover Damages, subject to

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SCE's rights in the event of a good faith dispute over Seller's estimates of the Default Amount or Cover Damages as set forth below.

Upon receipt of such payment by Seller, Seller shall promptly unwind any forward transactions related to the third party sales, provided that the Parties shall not reinstate full performance under this Agreement until the date specified by Seller, which shall be no greater than thirty (30) days after the end of the month that Seller received such payment (herein, the "Estimated Restart Date").

Within sixty (60) days after the Estimated Restart Date, Seller shall deliver to SCE an additional statement which sets forth the actual Default Amount and Cover Damages for the period from the Election Date through the Estimated Restart Date.

SCE shall then pay to Seller within forty-five (45) days of receipt of such subsequent statement, an amount equal to:

(X) the actual Default Amount plus the actual Cover Damages; less

(Y) the amount of any payments made on the Intended Cure Date for the estimated Default Amount plus the Cover Damages;

provided that, in the event that the amount of all payments made by SCE for the estimated Default Amount plus the Cover Damages exceeds the actual Default Amount plus actual Cover Damages, then Seller shall refund to SCE an amount equal to the difference between such payments and the actual Default Amount plus the actual Cover Damages within forty-five (45) days of receipt of such subsequent statement.

Once SCE has made all payments for the Default Amount plus the actual Cover Damages, Seller agrees that it shall no longer have any rights and remedies hereunder (including the right to terminate) at law or in equity with respect to the Event of Default giving rise to Seller's mitigation as described above.

If SCE in good faith disputes any estimate by Seller hereunder of the Default Amount or Cover Damages, it may elect to utilize EDR by providing Notice of a request for EDR to Seller within ten (10) days after receipt of the disputed calculation, in accordance with Section 12.03(a)(ii).

6.03 Termination Payment.

As soon as practicable after an Early Termination Date is declared, the Non-Defaulting Party shall provide Notice to the Defaulting Party of the sum of all amounts owed by the Defaulting Party under this Agreement, less any amounts owed by the Non-Defaulting Party to the Defaulting Party under this Agreement (the "Termination Payment").

In the event that SCE is the Defaulting Party, then the Non-Defaulting Party may include in its calculation of any amounts it is owed by the Defaulting Party the value of any lost income tax credits Seller would have earned under applicable Federal Production Tax Credit Legislation from the Early Termination Date to the end of the Term as if an Early Termination Date had not occurred.

The Notice shall include a written statement setting forth, in reasonable detail, the calculation of such Termination Payment including the Forward Settlement Amount, together with appropriate supporting documentation.

If the Termination Payment is positive, the Defaulting Party shall pay such amount to the Non-Defaulting Party within ten (10) Business Days after the Notice is provided. If the Termination Payment is negative (i.e., the Non-Defaulting Party owes the Defaulting Party more than the Defaulting Party owes the Non-Defaulting Party), *then* the Non-Defaulting Party shall pay such amount to the Defaulting Party within ten (10) Business Days after the Notice is provided.

If either Party in good faith disputes the calculation of the Termination Payment, it may elect EDR but must provide Notice to the other Party of such election within ten (10) days after receipt of the disputed calculation in accordance with Section 12.03(a)(ii). In the event that a Party is to receive a Termination Payment for an Early Termination Date (by determination of an Arbitrator or otherwise), such Termination Payment, once paid in full and credited to the account of the receiving Party, shall be the sole and exclusive remedy for the breach that was the basis of the designation of such Early Termination Date; *provided*, that nothing in this Section 6.03 shall limit either Party's right to enforce any obligations which survive termination of this Agreement.

*** End of ARTICLE SIX ***

ARTICLE SEVEN. LIMITATIONS OF LIABILITIES

EXCEPT AS SET FORTH HEREIN, THERE ARE NO WARRANTIES BY EITHER PARTY UNDER THIS AGREEMENT, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED.

THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF.

FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED, UNLESS THE PROVISION IN QUESTION PROVIDES THAT THE EXPRESS REMEDIES ARE IN ADDITION TO OTHER REMEDIES THAT MAY BE AVAILABLE.

IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED.

UNLESS EXPRESSLY HEREIN PROVIDED, AND SUBJECT TO THE PROVISIONS OF SECTION 10.03 (INDEMNITY), NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE.

IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE.

TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS AND DO NOT CONSTITUTE A PENALTY.

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NOTWITHSTANDING ANYTHING TO THE CONTRARY SET FORTH HEREIN, THE VALUE, IF ANY, OF ANY PRODUCTION TAX CREDITS, DETERMINED ON AN AFTER-TAX BASIS, LOST DUE TO SCE'S DEFAULT, SHALL BE DEEMED DIRECT TO THE EXTENT LOST PRODUCTION TAX CREDITS ARE RECOVERABLE UNDER THIS AGREEMENT. NOTHING IN THIS SECTION PREVENTS, OR IS INTENDED TO PREVENT SCE FROM PROCEEDING AGAINST OR EXERCISING ITS RIGHTS WITH RESPECT TO ANY SECURED INTERESTS IN COLLATERAL.

**** End of ARTICLE SEVEN ****

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ARTICLE EIGHT. CREDIT AND COLLATERAL REQUIREMENTS

8.01 Financial Information.

If requested by one Party, the other Party shall deliver:

- (a) Within one hundred twenty (120) days following the end of each fiscal year, a copy of its and its Guarantor's, if any, annual report containing audited consolidated financial statements for such fiscal year; and
- (b) Within sixty (60) days after the end of each of its first three fiscal quarters of each fiscal year, a copy of its and its Guarantor's, if any, quarterly report containing unaudited consolidated financial statements for such fiscal quarter.

In all cases the statements shall be for the most recent accounting period and prepared in accordance with generally accepted accounting principles;

provided that, should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as the producing party diligently pursues the preparation, certification and delivery of the statements.

8.02 Performance Assurance.

(a) Posting Performance Assurance.

On or before the commencement of the Term, Seller shall post Performance Assurance with SCE. The Performance Assurance Amount due to SCE by Seller shall be as set forth in Section 1.07.

The Performance Assurance Amount shall be posted to SCE at all times during the Term and thereafter until such time as Seller has satisfied all monetary obligations which survive any termination of this Agreement, not to exceed:

- (i) For an uncured Event of Default of Seller or Seller's Guarantor, one year following the Early Termination Date; and
- (ii) For all other circumstances, one hundred eighty (180) days following the termination of the Agreement; provided that SCE shall, within sixty (60) days following the termination of the Agreement, return to Seller fifty percent (50%) of the amount of any Performance Assurance which remains posted (i.e., has not been drawn upon by SCE as authorized hereunder) as of that time.

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The Performance Assurance Amount shall be either in the form of cash or Letter of Credit acceptable to SCE, provided that on the commencement of the Term, if Seller has posted the Development Security in the form of cash or a Letter of Credit and SCE has not either returned the Development Security to Seller or given Seller Notice, pursuant to Exhibit L, of its determination regarding the disposition of the Development Security by such date, then Seller may withhold the portion of the Performance Assurance Amount equal to the Development Security held by SCE until three (3) Business Days following the later of Seller's receipt or forfeiture of the Development Security or any portion thereof pursuant to Section 3.04 or SCE's Notice to Seller pursuant to Exhibit L of its determination regarding the disposition of the Development Security. SCE shall accept a Guaranty Agreement, in accordance with Section 8.02(d), from a Guarantor acceptable to SCE to satisfy Seller's Performance Assurance obligation in lieu of cash or Letter of Credit as set forth in Section 8.02(c). Such Guaranty shall be for the Performance Assurance Amount. At such time that Seller proposes to satisfy its Performance Assurance obligation by means of a Guaranty Agreement, Seller shall submit to SCE a Notice containing (x) financial statements and other information regarding the proposed Guarantor, (y) the proposed Cross Default Amount and (z) Credit Ratings and other relevant information provided by S&P or Moody's. SCE shall approve both the Guarantor and the Cross Default Amount in its discretion.

(b) Interest Payments on Cash.

Performance Assurance posted in cash shall bear simple interest at a rate equal to the Federal Funds Effective Rate.

Seller shall provide a monthly invoice to SCE that sets forth the calculation of the interest amount due and SCE shall make payment thereof by the later of the third Local Business Day:

- (i) Of the first month after the last month to which the invoice relates; or
- (ii) After the day on which such invoice is received;

so long as no Event of Default has occurred and is continuing with respect to the Seller, or no Early Termination Date for which any unsatisfied payment obligation of Seller exists has occurred or been designated as the result of an Event of Default by Seller.

On or after the occurrence of an Event of Default by Seller or an Early Termination Date as a result of an Event of Default by Seller, SCE shall retain any such interest amount as additional Performance Assurance hereunder until

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the obligations of the Seller under this Agreement have been satisfied in the case of an Early Termination Date or for so long as such Event of Default is continuing in the case of an Event of Default.

(c) Letters of Credit.

Performance Assurance provided in the form of a Letter of Credit shall be subject to the following provisions:

- (i) Each Letter of Credit shall be maintained for the benefit of SCE. The Seller shall:
- (1) Renew or cause the renewal of each outstanding Letter of Credit on a timely basis as provided in the relevant Letter of Credit;
 - (2) If the bank that issued an outstanding Letter of Credit has indicated its intent not to renew such Letter of Credit, provide alternative Performance Assurance acceptable to SCE at least forty-five (45) Business Days prior to the expiration of the outstanding Letter of Credit; and
 - (3) If the bank issuing a Letter of Credit fails to honor SCE's properly documented request to draw on an outstanding Letter of Credit, provide alternative Performance Assurance acceptable to SCE within one (1) Business Day after such refusal, or five (5) Business Days after such refusal if SCE's draw request results from Seller's failure to provide alternative Performance Assurance acceptable to SCE where a Letter of Credit is expiring as described in Section 1.C. of Attachment A to Exhibit M;
- (ii) Upon the occurrence of a Letter of Credit Default, Seller shall provide to SCE either a substitute Letter of Credit or alternative Performance Assurance acceptable to SCE, in each case on or before the first Business Day after the occurrence thereof (or the tenth (10th) Business Day after the occurrence thereof if only Section a) in the definition of "Letter of Credit Default" in Exhibit A applies);
- (iii) Upon, or at any time after, the occurrence and continuation of an Event of Default by Seller, or if an Early Termination Date has occurred or been designated as a result of an Event of Default by Seller for which there exist any unsatisfied payment obligations, *then* SCE may draw on any undrawn portion of any outstanding Letter of Credit upon

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submission to the bank issuing such Letter of Credit of one or more certificates specifying that such Event of Default or Early Termination Date has occurred and is continuing.

Cash proceeds received by SCE from drawing upon the Letter of Credit shall be deemed Performance Assurance as security for the Seller's obligations to SCE and SCE shall have the rights and remedies set forth in Section 8.03 with respect to such cash proceeds.

Notwithstanding SCE's receipt of cash proceeds of a drawing under the Letter of Credit, Seller shall remain liable for any:

- (1) Failure to provide sufficient Performance Assurance; or
 - (2) Any amounts owing to SCE and remaining unpaid after the application of the amounts so drawn by SCE.
- (iv) In all cases, the costs and expenses of establishing, renewing, substituting, canceling, and increasing the amount of a Letter of Credit shall be borne by Seller.

(d) Guaranty Agreement.

If Seller's Performance Assurance obligation is satisfied by a Guaranty Agreement, it shall be in the form of Exhibit I executed by a Guarantor acceptable to SCE meeting the Credit Rating requirements for a Guarantor set forth immediately below. The Guarantor shall maintain a Credit Rating of at least:

- (i) "BBB-" from S&P and "Baa3" from Moody's, if it is rated by both S&P and Moody's; or
- (ii) "BBB-" from S&P or "Baa3" from Moody's if it is rated by either S&P or Moody's but not by both.

If at any time the Guarantor fails to maintain such Credit Ratings, the Seller shall provide to SCE Performance Assurance in the form of cash or a Letter of Credit, or a replacement Guaranty Agreement from a party acceptable to SCE, within five (5) Business Days.

8.03 First Priority Security Interest in Cash or Cash Equivalent Collateral.

To secure its obligations under this Agreement, and until released as provided herein, Seller hereby grants to SCE a present and continuing first-priority security interest ("Security Interest") in, and lien on (and right to net against), and assignment of the

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Performance Assurance, all cash collateral and cash equivalent collateral (but excluding any of Seller's accounts receivable resulting from the generation of electricity from the Generating Facility pursuant to this Agreement) and any and all proceeds resulting there from or the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of SCE, and Seller agrees to take such action as SCE reasonably requires in order to perfect SCE's Security Interest in, and lien on (and right to net against), such collateral and any and all proceeds resulting there from or from the liquidation thereof.

Upon or any time after the occurrence or deemed occurrence and during the continuation of an Event of Default or an Early Termination Date, SCE may do any one or more of the following:

- (a) Exercise any of its rights and remedies with respect to all Performance Assurance, including any such rights and remedies under law then in effect;
- (b) Draw on any outstanding Letter of Credit issued for its benefit; and
- (c) Liquidate all Performance Assurance then held by or for the benefit of SCE free from any claim or right of any nature whatsoever of Seller, including any equity or right of purchase or redemption by Seller.

SCE shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce Seller's obligations under the Agreement (Seller shall remain liable for any amounts owing to SCE after such application), subject to SCE's obligation to return any surplus proceeds remaining after such obligations are satisfied in full.

8.04 Subordinated Security Interests and Mortgage.

- (a) Prior to the commencement of the Term, as security for Seller's performance and any amounts owed by Seller to SCE pursuant to this Agreement, Seller or SCE, as the case may be, shall execute, deliver, file and record, as appropriate, separate agreements, documents, fixture filings, financing statements or instruments (the "Security Documents") under which Seller will grant to SCE, in a form reasonably acceptable to SCE and subject to characterization as real or personal property in SCE's sole discretion, fully perfected security interest(s), or mortgage lien(s) in the Generating Facility and in any and all real and personal property rights, contractual rights, or other rights that Seller requires in order to construct or Operate the Generating Facility (collectively the "Secured Interests").

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Seller expressly grants SCE the right to file and or record, as appropriate, such fixture filings, financing statements and other Security Documents in order to perfect its security interests in the Generating Facility.

The Secured Interests shall be subordinate in right of payment, priority and remedies only to the interests of Lender (or its assignee or designee) in accordance with the terms of the subordination, intercreditor or other agreements to be mutually agreed upon by Seller, SCE and Lender. Any such subordination documents shall state that SCE's Secured Interests shall be junior and subordinate to the lien securing the senior debt of Lender with respect to right of payment, priority and remedies, including provisions which state SCE will not exercise any remedies or share in any proceeds of collateral until all senior debt is paid in full.

- (b) The Secured Interests shall not include the pledge, assignment, or other interest in the ownership interest in Seller.

The Parties shall confirm, define, and perfect the Secured Interests by executing, delivering, filing, and recording, at the expense of Seller, the Security Documents.

In addition, Seller agrees to file and expressly grants SCE the right to file or, in the case of a fixture filing record, such Uniform Commercial Code financing statements and to take such further action and execute such further instruments as shall reasonably be required by SCE to confirm and continue the validity, priority, and perfection of the Secured Interests which in all events shall be junior and subordinate to the lien securing the senior debt of Lender.

The granting of the Secured Interests shall not be to the exclusion of, nor be construed to limit the amount of any further claims, causes of action or other rights accruing to SCE by reason of any breach or default by Seller under this Agreement or the termination of this Agreement prior to the expiration of its Term.

The Secured Interests shall be discharged and released, and SCE shall take any steps reasonably required by Seller to effect and record such discharge and release, upon the expiration of the Term and satisfaction by Seller of all of its obligations hereunder.

Seller shall reimburse SCE for its reasonable costs associated with the discharge and release of the Secured Interests.

- (c) The Security Documents shall provide that if SCE acts to obtain title to the Generating Facility pursuant to the interests provided by Seller pursuant to Section 8.04(a) (which in all events shall be junior and subordinate to the interests of Lender), Seller shall take all steps necessary to transfer all Permits and licenses necessary to Operate the Generating Facility to SCE, and shall diligently prosecute and cooperate in such transfers.

8.05 Credit and Collateral Covenants.

- (a) Seller shall, from time to time as requested by SCE, execute, acknowledge, record, register, deliver and/or file all such notices, statements, instruments and other documents as may be necessary or advisable to render fully valid and enforceable under all applicable laws the Security Documents and the rights, liens and priorities of SCE with respect to the Security Interest and the Secured Interests provided for herein and therein.
- (b) Seller shall provide prompt Notice to SCE of any Restricted Financing and, as part of such Notice, supply to SCE evidence that the indebtedness incurred with respect to the Restricted Financing has received a credit rating of "B" (or the equivalent) or better from Moody's or S&P, *provided* that, if Seller has previously provided a credit rating to SCE hereunder with respect to a Restricted Financing, Seller must provide to SCE a credit rating from the same credit rating agency (i.e., S&P or Moody's) for any subsequent Restricted Financing.
- (c) Except for liens which secure a Restricted Financing; are created by the Security Documents; or are materialmen's, mechanic's, workers' or repairmen's liens arising in the ordinary course of business (that are not incurred in connection with the obtaining of any loan, advance or credit) for amounts which are not yet due or are being contested in good faith by appropriate proceedings and do not, in the aggregate materially impair the use or value of Seller's assets, Seller shall not create, incur, assume or suffer to be created by it or by any other person or entity, any lien on Seller's interest (or any part thereof) in this Agreement, the Site, or the Generating Facility. Seller shall promptly provide Notice to SCE of any attachment or the imposition of any lien against Seller's interest (or any part thereof) in the Site, this Agreement or the Generating Facility.
- (d) During any period during which a Seller is a Defaulting Party and until the resolution of the relevant default or Event of Default, which such resolution shall include the payment in full of any amounts that are finally determined to be owed by Seller to SCE, Seller shall not:

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- (i) Declare or pay any dividend, or make any other distribution or payment, on account of any equity interest in Seller; or
 - (ii) Otherwise make any distribution or payment to any Affiliate of Seller;
- provided, however, Seller may make ordinary course distributions (including distributions to parent entities) for the payment of debt.*

8.06 Waivers.

SELLER AGREES THAT SELLER WILL NOT AT ANY TIME INSIST UPON, PLEAD, CLAIM OR TAKE THE BENEFIT OR ADVANTAGE OF ANY LAW NOW OR HEREAFTER IN FORCE PROVIDING FOR ANY APPRAISEMENT, VALUATION, STAY OF EXECUTION, EXEMPTION, EXTENSION OR REDEMPTION, OR REQUIRING FORECLOSURE OF ANY RIGHTS GRANTED TO SCE BY SELLER UNDER ANY DEED OF TRUST BEFORE EXERCISING ANY OTHER REMEDY GRANTED HEREUNDER.

**** End of ARTICLE EIGHT ****

The contents of this document are subject to restrictions on disclosure as set forth herein.

ARTICLE NINE. GOVERNMENTAL CHARGES

9.01 Cooperation to Minimize Tax Liabilities.

Each Party shall use reasonable efforts to implement the provisions of and to administer this Agreement in accordance with the intent of the Parties to minimize all taxes, so long as neither Party is materially adversely affected by such efforts.

9.02 Governmental Charges.

Seller shall pay or cause to be paid all taxes imposed by any Governmental Authority ("Governmental Charges") on or with respect to the Delivered Amounts (and any contract associated with the Delivered Amounts) arising prior to and at the Delivery Point, including, but not limited to, ad valorem taxes and other taxes attributable to the Generating Facility, land, land rights or interests in land for the Generating Facility.

SCE shall pay or cause to be paid all Governmental Charges on or with respect to the Delivered Amounts from the Delivery Point. In the event Seller is required by law or regulation to remit or pay Governmental Charges which are SCE's responsibility hereunder, SCE shall promptly reimburse Seller for such Governmental Charges.

If SCE is required by law or regulation to remit or pay Governmental Charges which are Seller's responsibility hereunder, SCE may deduct such amounts from payments to Seller made pursuant to Article Four.

If SCE elects not to deduct such amounts from Seller's payments, Seller shall promptly reimburse SCE for such amounts upon request. Nothing shall obligate or cause a Party to pay or be liable to pay any Governmental Charges for which it is exempt under the law.

9.03 Providing Information to Taxing Authorities.

Seller or SCE, as necessary, shall provide information concerning the Generating Facility to any requesting taxing authority.

*** End of ARTICLE NINE ***

ARTICLE TEN. MISCELLANEOUS**10.01 Representations and Warranties.**

On the Effective Date, each Party represents and warrants to the other Party that:

- (a) It is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation;
- (b) Except for CPUC Approval in the case of SCE, and all Permits (including the CEC Certification and Verification) and agreements necessary to install, interconnect and Operate the Generating Facility in the case of Seller, it has or will timely acquire all regulatory authorizations necessary for it to legally perform its obligations under this Agreement;
- (c) The execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or the like applicable to it;
- (d) This Agreement constitutes a legally valid and binding obligation enforceable against it in accordance with its terms, subject to any Equitable Defenses;
- (e) There is not pending, or to its knowledge, threatened against it or, in the case of Seller, any of its Affiliates, any legal proceedings that could materially adversely affect its ability to perform under the Agreement;
- (f) No Event of Default with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement;
- (g) It is acting for its own account and its decision to enter into this Agreement is based upon its own judgment, not in reliance upon the advice or recommendations of the other Party and it is capable of assessing the merits of and understanding, and understands and accepts the terms, conditions and risks of this Agreement;
- (h) It has not relied upon any promises, representations, statements or information of any kind whatsoever that are not contained in this Agreement in deciding to enter into this Agreement; and
- (i) It has entered into this Agreement in connection with the conduct of its business and it has the capacity or ability to make or take delivery of the Product as contemplated in this Agreement.

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10.02 Additional Seller Warranties and Covenants.

- (a) Seller covenants that it will deliver to SCE the Product free and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto by any person.
- (b) Seller represents, warrants and covenants that it holds and will hold from the Effective Date throughout the Term, the rights to all Environmental Attributes, Capacity Attributes and Resource Adequacy Benefits associated with the Generating Facility and that it has not and shall not transfer any such Environmental Attributes, Capacity Attributes and Resource Adequacy Benefits to any party other than SCE.

SELLER DISCLAIMS ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, REGARDING THE RECOGNITION, EXISTENCE, VALUE, CHARACTERIZATION, ACCOUNTING TREATMENT OR OTHER TREATMENT TO BE AFFORDED BY ANY GOVERNMENTAL AUTHORITY OR MARKET PARTICIPANT OF ANY ENVIRONMENTAL ATTRIBUTES, RESOURCE ADEQUACY BENEFITS AND/OR CAPACITY ATTRIBUTES ASSOCIATED WITH THE GENERATING FACILITY.

- (c) Seller covenants that, throughout the Term:
 - (i) Subject to Section 3.18, the Generating Facility will qualify and be certified by the CEC as an ERR;
 - (ii) The Generating Facility will qualify as a “qualifying facility” under the Public Utility Regulatory Policies Act of 1978 (codified in part at 16 USCA §796, “PURPA”) and regulations of the Federal Energy Regulatory Commission implementing PURPA;
 - (iii) The Generating Facility output delivered to SCE will qualify as generation from an ERR under the requirements of the RPS Legislation;
 - (iv) The Generating Facility will not receive retail electric service for which it will be charged on a per kilowatt-hour or per megawatt-hour basis as measured by a meter located on or proximate to the Site; and
 - (v) Seller shall maintain and remain in compliance with all Permits and all consents, orders or similar requirements imposed by any Governmental Authority in order to construct and Operate the Generating Facility and to perform its obligations hereunder.

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10.03 Indemnity.

- (a) Each Party as indemnitor shall defend, hold harmless and indemnify the other Party and the directors, officers, employees, and agents of such other Party against and from any and all loss, liability, damage, claim, cost, charge, demand, or expense (including any direct, indirect, or consequential loss, liability, damage, claim, cost, charge, demand, or expense, including attorneys' fees) for injury or death to persons, including employees of either Party, and physical damage to property including property of either Party arising out of or in connection with the gross negligence or willful misconduct of the indemnitor relating to its obligations under this Agreement.

This indemnity shall apply notwithstanding the active or passive negligence of the indemnitee.

However, neither Party shall be indemnified hereunder for its loss, liability, damage, claim, cost, charge, demand or expense resulting from its sole negligence or willful misconduct.

- (b) Each Party releases and shall defend, hold harmless and indemnify the other Party from any and all loss, liability, damage, claim, cost, charge, demand or expense arising out of or in connection with any breach made by the other Party of its representations and warranties in Sections 10.01 and 10.02.
- (c) The provisions of this Section 10.03 shall not be construed to relieve any insurer of its obligations to pay any insurance claims in accordance with the provisions of any valid insurance policy.
- (d) Except as otherwise provided in Sections 10.03(a) and 10.03(f), neither Party shall be liable to the other Party for consequential damages incurred by such other Party.
- (e) Notwithstanding anything to the contrary in this Agreement, if Seller fails to comply with the provisions of Section 10.11, Seller shall, at its own cost, defend, hold harmless and indemnify SCE, its directors, officers, employees, and agents, assigns, and successors in interest, from and against any and all loss, liability, damage, claim, cost, charge, demand, or expense of any kind or nature (including any direct, indirect, or consequential loss, damage, claim, cost, charge, demand, or expense, including attorneys' fees and other costs of litigation), resulting from injury or death to any person or damage to any property, including the personnel or property of SCE, to the extent that SCE would have been protected had Seller complied with all of the provisions of Section 10.11.

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The inclusion of this Section 10.03(e) is not intended to create any express or implied right in Seller to elect not to provide the insurance required under Section 10.11.

- (f) Each Party shall indemnify, defend and hold harmless the other Party against any Governmental Charges for which such Party is responsible under Article Nine.
- (g) Seller shall defend, hold harmless and indemnify SCE against any penalty imposed upon SCE by the Transmission Provider as a result of Seller's failure to fulfill its obligations regarding resource adequacy as set forth under Section 3.01.
- (h) SCE shall indemnify Seller for claims arising from any violations of Site safety rules of which it is aware during its examinations of the Site, as provided in Section 3.17.
- (i) All indemnity rights shall survive the termination of this Agreement for twelve (12) months.

10.04 Assignment.

- (a) Except as provided in Section 10.05 or in the case of an assignment by Seller to a Permitted Transferee, neither Party shall assign this Agreement or its rights hereunder without the prior written consent of the other Party, which consent shall not be unreasonably withheld.
- (b) Any Change of Control of Seller (whether voluntary or by operation of law) shall be deemed an assignment and shall require the prior written consent of SCE, which consent shall not be unreasonably withheld; provided that a direct or indirect transfer of any equity interest in the Seller shall not be considered a Change of Control if such transfer is to one or more Permitted Transferees.

10.05 Consent to Collateral Assignment.

Subject to the provisions of this Section 10.05, Seller shall have the right to assign this Agreement as collateral for any financing or refinancing of the Generating Facility.

In connection with any financing or refinancing of the Generating Facility by Seller, SCE and Seller shall in good faith work with Lender to agree upon a consent to collateral assignment of this Agreement ("Collateral Assignment Agreement").

The Collateral Assignment Agreement shall be in form and substance agreed to by SCE, Seller and Lender, and shall include, among others, the following provisions:

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- (a) SCE shall give Notice of an Event of Default by Seller, to the person(s) to be specified by Lender in the Collateral Assignment Agreement, prior to exercising its right to terminate the Agreement as a result of such Event of Default;
- (b) Lender shall have the right to cure an Event of Default by Seller in accordance with the provisions of the Agreement;
- (c) Following an Event of Default by Seller under this Agreement, SCE may require Seller or Lender to provide to SCE a report concerning:
 - (i) The status of efforts by Seller or Lender to develop a plan to cure the Event of Default;
 - (ii) If a cure plan has been adopted, the status of the cure plan's implementation (including any modifications to the plan as well as the expected timeframe within which any cure is expected to be implemented); and
 - (iii) Any other information which SCE may reasonably require related to the development, implementation and timetable of the cure plan.

Seller or Lender shall provide the report to SCE within ten (10) Business Days after Notice from SCE requesting the report. SCE shall have no further right to require the report with respect to a particular Event of Default after that Event of Default has been cured;

- (d) Lender shall have the right to cure an Event of Default on behalf of Seller, only if Lender sends a written notice to SCE prior to the end of any cure period indicating Lender's intention to cure. Lender must remedy or cure the Event of Default within the cure period under the Agreement;
provided that, such cure period may, in SCE's sole discretion, be extended by no more than an additional one hundred eighty (180) days;
- (e) Lender shall have the right to consent prior to any termination of the Agreement which does not arise out of an Event of Default;
- (f) Lender shall receive prior Notice of and the right to approve material amendments to the Agreement, which approval shall not be unreasonably withheld, delayed or conditioned;
- (g) In the event Lender, directly or indirectly, takes possession of, or title to the Generating Facility (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure), Lender shall assume all of Seller's obligations

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arising under this Agreement and all related agreements (subject to such limits on liability as are mutually agreed to by Seller, SCE and Lender as set forth in the Collateral Assignment Agreement);

provided that, Lender shall have no personal liability for any monetary obligations of Seller under the Agreement which are due and owing to SCE as of the assumption date;

provided, however, that prior to such assumption, if SCE advises Lender that SCE will require that Lender cure (or cause to be cured) any Event of Default existing as of the possession date in order to avoid the exercise by SCE (in its sole discretion) of SCE's right to terminate the Agreement in respect of such Event of Default, *then* Lender at its option; and in its sole discretion, may elect to either:

- (i) Cause such Event of Default to be cured, or
 - (ii) Not assume this Agreement;
- (h) If Lender elects to sell or transfer the Generating Facility (after Lender directly or indirectly, takes possession of, or title to the Generating Facility), or sale of the Generating Facility occurs through the actions of Lender (for example, a foreclosure sale where a third party is the buyer, or otherwise),

then Lender must cause the transferee or buyer to assume all of Seller's obligations arising under this Agreement and all related agreements as a condition of the sale or transfer.

Such sale or transfer may be made only to an entity with financial qualifications (including, collateral support and any other additional security as may be required by SCE) and operating experience equivalent to Seller as of the Effective Date reasonably satisfactory to SCE; and

- (i) If this Agreement is rejected in Seller's Bankruptcy or otherwise terminated in connection therewith and if Lender or its designee, directly or indirectly, takes possession of, or title to, the Generating Facility (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure), Lender shall or shall cause its designee to promptly enter into a new agreement with SCE having substantially the same terms as this Agreement.

10.06 Abandonment.

Except as provided under Section 10.05(b), Seller shall not relinquish its possession and control of the Generating Facility without the prior written consent of SCE.

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For purposes of this Section 10.06, Seller shall have been deemed to relinquish possession of the Generating Facility if Seller has ceased work on the Generating Facility or the Generating Facility has ceased production and delivery of the Product, and such cessation is not a result of an event of Force Majeure, for a consecutive thirty (30) day period.

10.07 Governing Law.

THIS AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED, ENFORCED AND PERFORMED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW.

EACH PARTY WAIVES ITS RESPECTIVE RIGHT TO ANY JURY TRIAL WITH RESPECT TO ANY LITIGATION ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT.

10.08 Notices.

All notices, requests, statements or payments shall be made as specified in Exhibit C.

Notices (other than scheduling requests) shall, unless otherwise specified herein, be in writing and may be delivered by hand delivery, United States mail, overnight courier service or facsimile.

- (a) Notice provided in accordance with this Section 10.08 shall be deemed given as follows:

Notice by facsimile or hand delivery shall be deemed given at the close of business on the day actually received, if received during business hours on a Business Day, and otherwise shall be deemed given at the close of business on the next Business Day.

- (b) Notice by overnight United States mail or courier shall be deemed given on the next Business Day after it was sent out; and

- (c) Notice by first class United States mail shall be deemed given two (2) Business Days after it was sent.

Notices shall be effective on the date deemed given, unless a different date for the Notice to go into effect is stated in another section of this Agreement.

A Party may change its designated representatives, addresses and other contact information by providing notice of same in accordance herewith.

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All notices, requests, statements or payments for this Generating Facility must reference the QFID number set forth on the title page to this Agreement.

10.09 General.

- (a) This Agreement constitutes the entire agreement between the Parties relating to its subject matter.
- (b) This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof.
- (c) Except to the extent provided for herein, no amendment or modification to this Agreement shall be enforceable unless reduced to a writing signed by all Parties.
- (d) This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement or the Lender under Article Eight).
- (e) Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default.
- (f) The term "including" when used in this Agreement shall be by way of example only and shall not be considered in any way to be in limitation.
- (g) The word "or" when used in this Agreement shall include the meaning "and/or" unless the context unambiguously dictates otherwise.
- (h) The headings used herein are for convenience and reference purposes only. Words having well-known technical or industry meanings shall have such meanings unless otherwise specifically defined herein.
- (i) Where days are not specifically designated as Business Days, they are calendar days.
- (j) This Agreement shall be binding on each Party's successors and permitted assigns.
- (k) No provision of this Agreement is intended to contradict or supersede any applicable agreement covering transmission, distribution, metering, scheduling or interconnection. In the event of an apparent contradiction between this Agreement and any such agreement, the applicable agreement shall control.

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- (l) Whenever this Agreement specifically refers to any law, tariff, government department or agency, regional reliability council, Transmission Provider, or Credit Rating agency, the Parties hereby agree that the reference shall also refer to any successor to such law, tariff or organization.
- (m) SCE's obligation to take and pay for electric energy produced by the Generating Facility together with Environmental Attributes and Capacity Attributes associated therewith, shall not be affected by any change to or elimination of this RPS Legislation.
- (n) The Parties acknowledge and agree that this Agreement and the transactions contemplated by this Agreement constitute a "forward contract" within the meaning of the United States Bankruptcy Code and that SCE and Seller are each "forward contract merchants" within the meaning of the United States Bankruptcy Code.

10.10 Confidentiality.

(a) Terms and Conditions of this Agreement.

Neither Party shall disclose the non-public terms or conditions of this Agreement to a third party, other than:

- (i) To such Party's employees, lenders, counsel, accountants or advisors who have a need to know such information and have agreed to keep such terms confidential;
- (ii) To SCE's Procurement Review Group, as defined in CPUC Decision 02-08-071, subject to any confidentiality agreements or laws, or regulations or regulatory decisions concerning confidentiality which are applicable to SCE's Procurement Review Group;
- (iii) To the CPUC under seal for purposes of review, subject to the disclosing Party ("Disclosing Party") making reasonable efforts to obtain confidentiality protection from the CPUC under Section 583 of the California Public Utilities Code or other applicable statute, order or rule;
- (iv) To the ISO in order to participate in any auction, market or other process pertaining to the allocation of priorities or rights related to the transmission of electrical energy sold or to be sold to SCE hereunder;
- (v) In order to comply with any Applicable Law or any exchange, control area or ISO rule, or order issued by a court or entity with competent

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jurisdiction over the Disclosing Party, other than to those entities set forth in Section 10.10(a)(vi);

- (vi) In order to comply with any applicable regulation, rule, or order of the CPUC, CEC, or FERC, any court, administrative agency, legislative body or other tribunal, or any discovery or data request of a party to any proceeding pending before any of the foregoing;
- (vii) To representatives of a Party's credit ratings agencies:
 - (1) Who have a need to review the terms and conditions of this Agreement for the purpose of assisting the Party in evaluating this Agreement for credit rating purposes; or
 - (2) With respect to the potential impact of this Agreement on the Party's financial reporting obligations.
- (viii) In connection with discovery requests or orders pertaining to the non-public terms of this Agreement as referenced in this Section 10.10(a) ("Disclosure Order"), each Party shall, to the extent practicable, use reasonable efforts to (x) notify the other Party prior to disclosing the confidential information and (y) prevent or limit such disclosure.

After using such reasonable efforts, the Disclosing Party shall not be (A) prohibited from complying with a Disclosure Order or (B) liable to the other Party for monetary or other damages incurred in connection with the disclosure of the confidential information.

Except as provided in the preceding sentence, the Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation.

(b) Non-Disclosure Agreement.

- (i) The Non-Disclosure Agreement between the Parties attached hereto as Exhibit J is incorporated herein (the "NDA"), and the termination date of that agreement is modified such that it will terminate on the later of:
 - (1) Three (3) years following the Effective Date; or
 - (2) One year after the date of termination of this Agreement.

Information provided by the Parties pursuant to this Agreement shall be subject to the NDA, or to such other agreement that the Parties shall

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negotiate to provide reasonable protection for their confidential business information or trade secrets.

- (ii) The term "Confidential Information" as used in the NDA shall be deemed to include (in addition to the information described in the NDA) this Agreement and all oral or written communications exchanged between the Parties pursuant to this Agreement, except for communications and information described in Section 4 of the NDA.
- (iii) Confidential Information may only be used for the purposes set forth under the NDA and for the purpose of implementing and enforcing this Agreement.

(c) RPS Confidentiality.

Notwithstanding Section 10.10(a), at any time on or after the date on which the SCE makes its advice filing letter seeking CPUC Approval of the Agreement, either Party shall be permitted to disclose the following terms with respect to this Agreement:

- (i) Party names;
- (ii) ERR type;
- (iii) Term;
- (iv) Generating Facility location;
- (v) Generating Facility capacity;
- (vi) Expected deliveries;
- (vii) Delivery Point; and
- (viii) Online date.

10.11 Insurance.

- (a) Throughout the Term, Seller shall obtain and maintain in force as hereinafter provided commercial general liability insurance, including contractual liability coverage, with a combined single limit of not less than two million dollars (\$2,000,000) for each occurrence.

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The insurance carrier or carriers and form of policy shall be subject to review and approval by SCE which approval shall not be unreasonably withheld or delayed.

- (b) Before commencement of the Term, as provided in Section 2.03(a), Seller shall:
 - (i) Furnish a certificate of insurance to SCE, which certificate shall provide that such insurance shall not be terminated nor expire except on thirty (30) calendar days' prior written notice to SCE;
 - (ii) Furnish to SCE an additional insured endorsement with respect to such insurance in substantially the following form:

“In consideration of the premium charged, SCE is named as additional insured with respect to all liabilities arising out of Seller’s use and ownership of Seller’s Generating Facility.

The inclusion of more than one insured under this policy shall not operate to impair the rights of one insured against another insured and the coverages afforded by this policy will apply as though separate policies had been issued to each insured.

The inclusion of more than one insured will not, however, operate to increase the limit of the carrier’s liability.

SCE will not, by reason of its inclusion under this policy, incur liability to the insurance carrier for payment of premium for this policy.

Any other insurance carried by SCE which may be applicable shall be deemed excess insurance and Seller’s insurance primary for all purposes despite any conflicting provisions in Seller’s policy to the contrary.”

10.12 Nondedication.

Notwithstanding any other provisions of this Agreement, neither Party dedicates any of the rights that are or may be derived from this Agreement or any part of its facilities involved in the performance of this Agreement to the public or to the service provided under the Agreement, and such service shall cease upon termination of the Agreement.

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10.13 Mobile Sierra.

Notwithstanding any provision of this Agreement, neither Party shall seek, nor shall they support any third party in seeking, to prospectively or retroactively revise the rates, terms and/or conditions of service of this Agreement through application or complaint to FERC pursuant to the provisions of Section 205, 206 or 306 of the Federal Power Act, or any other provisions of the Federal Power Act, absent prior written agreement of the Parties.

Further, absent the prior agreement in writing by both Parties, the standard of review for changes to the rates, terms or conditions of this Agreement proposed by a Party, a non-Party or the FERC acting *sua sponte* shall be the "public interest" standard of review set forth in United Gas Pipe Line Co., v. Mobile Gas Service Corp., 350 US 332 (1956) and Federal Power Commission v. Sierra Pacific Power Co., 350 US 348 (1956).

10.14 Interest.

Except as specifically provided in this Agreement, any outstanding and past due amounts owing and unpaid by either Party under the terms of this Agreement, shall bear simple interest at the Interest Rate.

10.15 Payments.

Payments to be made under this Agreement shall be made by wire transfer.

*** End of ARTICLE TEN ***

ARTICLE ELEVEN. CHANGE IN ELECTRIC MARKET DESIGN

11.01 Changes Rendering the Agreement Incapable of Performance.

If a Change in ISO Tariff renders this Agreement or any terms herein incapable of being performed or administered, or results, or could reasonably be forecasted to result, in an ISO Change Cost Payment as defined herein for any Firm Operating Period Year, then either Party, on Notice, may request the other Party to enter into negotiations to make the minimum changes to the Agreement necessary to make the Agreement capable of being performed and administered or to minimize ISO Change Cost Payments, while attempting to preserve to the maximum extent possible the benefits, burdens and obligations set forth in the Agreement as of the Effective Date.

Upon receipt of a Notice requesting negotiations, the Parties shall negotiate in good faith.

If the Parties are unable, within sixty (60) days of the sending of the Notice requesting negotiations, either to agree upon changes to the Agreement or to resolve issues relating to changes to the Agreement, then either Party may submit issues pertaining to changes to the Agreement to arbitration as provided in Article Twelve.

A change in cost shall not in itself be deemed to render the Agreement or any terms herein incapable of being performed or administered, or constitute, or form the basis of, a Force Majeure event.

11.02 Changes Resulting in Costs or Benefits to Seller.

(a) ISO Change Cost.

As of the Effective Date, it is uncertain how a Change in ISO Tariff may affect ISO charges to Seller or Seller's Actual Revenue.

The total net incremental changes in ISO charges to Seller and Seller's Actual Revenue for any Firm Operating Period Year as a result of a Change in ISO Tariff *in the following specific circumstances* shall be collectively referred to in the aggregate as the "ISO Change Cost" for such Firm Operating Period Year:

- (i) Changes in the method for the allocation of available transmission capacity among generators including Seller, which upon the occurrence of congestion on the transmission system, impacts Seller's Delivered Amounts, Metered Amounts or congestion charges to Seller resulting thereof;

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- (ii) Changes in the method of calculating, assessing and charging Seller for transmission losses for the delivery of electric energy from the Generating Facility to the Delivery Point including electrical losses occurring over the ISO Grid, and any changes in Seller's Delivered Amounts resulting from the assessment of transmission losses thereto; and
- (iii) Changes in, or elimination of, the Participating Intermittent Resource Program, including changes in rates assessed by the ISO in respect of the ISO PIRP Charges that have a material impact on Seller.

The procedure for determining an ISO Change Cost is described in Exhibit P.

In the event of an inconsistency between this Section 11.02 and Exhibit P concerning the determination of an ISO Change Cost, Exhibit P shall govern.

(b) ISO Change Cost Payment.

For each applicable Firm Operating Period Year, the Parties shall reimburse each other as follows in accordance with this Article Eleven: SCE shall pay Seller the amount of the ISO Change Cost above the ISO Change Cost Threshold Amount if the ISO Change Cost has been a cost to Seller, and Seller shall pay SCE the difference between the ISO Change Cost Threshold Amount and the ISO Change Cost if the ISO Change Cost has been a savings to Seller (each, an "ISO Change Cost Payment"), in accordance with Exhibit P.

The procedure for calculating the total net incremental change in ISO charges to Seller or Seller's Actual Revenue during any Firm Operating Period Year associated with an ISO Change Cost and for calculating any payment owed to a Party in respect of an ISO Change Cost is described in Exhibit P.

The procedure for addressing disputes related to an ISO Change Cost Payment is set forth in Section 11.03 below.

In the event of an inconsistency between this Section 11.02 and Exhibit P concerning the determination of an ISO Change Cost Payment, Exhibit P shall govern.

11.03 Procedure for Claiming an ISO Change Cost Payment.

(a) Notice of Claim for an ISO Change Cost Payment.

If either Party believes that it is owed an ISO Change Cost Payment for any Firm Operating Period Year, it shall, on or before the sixtieth (60th) day after

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the end of the Firm Operating Period Year, provide Notice to the other Party of its claim for the ISO Change Cost Payment.

Such a Notice must include the Party's explanation and support for its claim that a Change in ISO Tariff has occurred and an ISO Change Cost was incurred therefrom, the Party's calculation of its ISO Change Cost and ISO Change Cost Payment in accordance with Exhibit P supporting its ISO Change Cost Payment claim, and annotated workpapers and source data supporting the Party's calculations.

(b) Payment of Claim.

Subject to Section 11.03(c) regarding dispute of a claim, a Party receiving a claim for an ISO Change Cost Payment shall pay the claim (or any undisputed portion of the claim) within forty-five (45) days from the date Notice of an ISO Change Cost Payment is provided pursuant to this Section 11.03.

(c) Disputed Claims.

If either Party disputes in good faith a claim for an ISO Change Cost Payment, such Party may elect to utilize EDR by providing Notice of such election to the other Party within ten (10) days after receipt of the disputed ISO Change Cost Payment request, in accordance with the provisions of Section 12.03(a)(ii).

If a disputing Party does not elect to utilize EDR, the Parties shall negotiate in good faith to resolve the dispute. If they are unable to resolve the dispute within forty-five (45) days after the sending of the Notice of a claim for an ISO Change Cost Payment pursuant to this Section 11.03(c), either Party may submit the dispute to mediation and ADR as provided in Article Twelve.

The Parties shall promptly provide information or data relevant to the dispute as they each may possess which is requested by the other Party. Any information provided in connection with dispute resolution may be provided pursuant either to the Non-Disclosure Agreement attached as Exhibit J or to such other agreement that the Parties shall negotiate to provide reasonable protection for their confidential business information or trade secrets.

11.04 ISO Change Cost Threshold Amount.

The "ISO Change Cost Threshold Amount" shall be the value calculated in accordance with the following formula:

$$\text{ISO CHANGE COST THRESHOLD AMOUNT} = A \times B \times C$$

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Where A = Firm Operating Period Year Estimate of Metered
Amounts in any Firm Operating Period Year.

B = Energy Price, in \$/kWh (i.e., \$/MWh/1000).

C = Two percent (2%).

**** End of ARTICLE ELEVEN ****

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ARTICLE TWELVE. MEDIATION AND ARBITRATION

12.01 Dispute Resolution.

The Parties agree that any and all disputes, claims or controversies arising out of, relating to, concerning or pertaining to the terms of this Agreement, or to either Party's performance or failure of performance under this Agreement ("Dispute"), which Dispute the Parties have been unable to resolve by informal methods after undertaking a good faith effort to do so, shall be resolved according to the dispute resolution procedures of this Article Twelve.

Any Dispute that is not an EDR Eligible Dispute shall first be submitted to mediation under the procedures described in Section 12.02 below, and if the matter is not resolved through mediation, then for final and binding arbitration under the procedures described in Section 12.03(b) below.

The Parties waive any right to a jury and agree that there shall be no interlocutory appellate relief (such as writs) available.

12.02 Mediation.

Either Party may initiate mediation by providing Notice to the other Party in accordance with Section 10.08 of a written request for mediation, setting forth a description of the Dispute and the relief requested.

The Parties will cooperate with one another in selecting the mediator ("Mediator") from the panel of neutrals from Judicial Arbitration and Mediation Services, Inc. ("JAMS"), its successor, or any other mutually acceptable non-JAMS Mediator, and in scheduling the time and place of the mediation.

Such selection and scheduling shall be completed within forty-five (45) days after Notice of the request for mediation.

Unless otherwise agreed to by the Parties, the mediation shall not be scheduled for a date that is greater than one hundred twenty (120) days from the date of Notice of the request for mediation.

The Parties covenant that they will participate in the mediation in good faith, and that they will share equally in its costs (other than each Party's individual attorneys' fees and costs related to the Party's participation in the mediation, which fees and costs shall be borne by such Party).

All offers, promises, conduct and statements, whether oral or written, made in connection with or during the mediation by either of the Parties, their agents, representatives, employees, experts and attorneys, and by the Mediator or any of the

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Mediator's agents, representatives and employees, shall not be subject to discovery and shall be confidential, privileged and inadmissible for any purpose, including impeachment, in any arbitration or other proceeding between or involving the Parties, or either of them,

provided that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the mediation.

12.03 Binding Arbitration.

(a) Expedited Dispute Resolution.

(i) Eligible Disputes for Expedited Dispute Resolution.

In order to expedite the resolution of certain disputed payment amounts and certain disputed defaults under this Agreement, either Party may elect to commence a proceeding for binding expedited dispute resolution ("EDR") for such disputes in accordance with the provisions of this Section 12.03(a). Those disputes for which EDR shall be available (the "EDR Eligible Disputes") shall be disputes over Non-Financial Defaults and the payment amounts in Payment Requests only. Disputes regarding Financial Defaults shall not be eligible for EDR.

(ii) Notice: EDR Collateral Amount.

In the event that one Party receives an invoice for payment or a Notice of default for any EDR Eligible Dispute, and the receiving Party believes that it has a bona fide, good faith dispute regarding the payment amount or alleged default, such Party (the "Disputing Party") may initiate expedited binding arbitration with respect to such dispute by providing Notice in accordance with Section 10.08 of a demand for EDR before the Arbitrator (as defined below), *provided that* such Notice must be given by the Disputing Party within ten (10) days after receipt of such payment invoice or Notice of default, as applicable; *provided*, that in no event shall such Notice be given later than the expiration of the cure period applicable to such default. No mediation shall be required in order to commence EDR for an EDR Eligible Dispute.

The Disputing Party's Notice shall set forth in detail the reason for its dispute, and shall include the Disputing Party's calculation of any disputed amounts, calculated in accordance with the appropriate

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provisions of this Agreement, as well as annotated work papers and source data supporting the Disputing Party's calculations and claims.

In addition, if SCE has elected the Low Price Point, Seller may only utilize EDR as a Disputing Party if, within two (2) Business Days after sending its Notice requesting EDR, Seller posts the EDR Collateral Amount.

(iii) EDR Procedures.

During the first thirty (30) days after receipt of a Notice of request for EDR, the Parties shall: (y) engage in good faith negotiations to resolve their disputes with respect to any payment amount or alleged default; and (z) cooperate with one another in selecting an Arbitrator capable of complying with the conditions of this EDR procedure.

If the Parties are able to resolve their dispute by good faith negotiation within the aforementioned thirty (30) day period, the Parties may agree in writing to cancel the EDR, each Party shall pay its own attorneys' fees and costs associated with the arbitration, if any, and the Parties shall bear equally all other costs of the arbitration, if any.

If the EDR proceeds, the Arbitrator shall be instructed that a final decision must be rendered within one hundred eighty (180) days after receipt of the Notice for EDR (the "EDR Decision Deadline"), and the Parties shall cooperate with each other and the Arbitrator in a good faith effort to meet the EDR Decision Deadline. EDR shall proceed in accordance with the provisions of Section 12.04.

(iv) Effect of EDR.

In the event that a Disputing Party invokes EDR for an EDR Eligible Dispute in accordance with the procedures set forth above:

(1) Notwithstanding the expiration of any applicable cure period hereunder, from the date of receipt of the Notice requesting EDR until the earlier of: (i) three (3) Business Days after a decision of the Arbitrator in the EDR proceeding, or (ii) the EDR Decision Deadline (the "Tolling Period"):

(a) An Event of Default shall not be deemed to have occurred; and

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- (b) The Party providing the invoice for payment or Notice of default (the "Non-Disputing Party") may not exercise its right to terminate this Agreement based upon any Non-Financial Defaults or Payment Requests provided that if Seller exercises an option to mitigate damages pursuant to Section 6.02(c), it shall refrain from exercising a termination right hereunder for the time periods and as provided in that section.

Nothing set forth in subclauses (a) and (b) above shall act to toll or extend any cure periods under Section 6.01; and

- (2) During the Tolling Period, the Parties may not exercise any of their netting rights under Section 4.05 based upon a Payment Request or Non-Financial Default which is the subject of an EDR proceeding invoked by the Disputing Party;

provided that, in the event SCE is the Non-Disputing Party, its obligations under clauses (1)-(2) above shall be terminated immediately in the event Seller makes any equity distributions to its Affiliates, other than ordinary course distributions (including distributions to parent entities) for the payment of debt, at any time during the Tolling Period.

In the event that the Arbitrator does not render a final decision on or before the EDR Decision Deadline, the Parties may, by mutual agreement in writing, either terminate the EDR proceeding or allow the EDR proceeding to continue, notwithstanding that the Non-Disputing Party is free at such time to exercise its termination right and its netting rights.

- (v) EDR Collateral Amount.

The EDR Collateral Amount shall be posted to SCE in the form of cash or Letter of Credit, as set forth for any applicable Performance Assurance generally pursuant to Section 8.02(c), and shall be posted and maintained by Seller continuously, commencing with the time specified in Section 12.03(a)(ii) above, to and including the later of: (i) the date, as set forth in a Notice to be provided to Seller by SCE, that the applicable dispute has been fully resolved, as determined by SCE in its reasonable discretion, and all amounts owing to SCE in respect of the dispute have been paid, (ii) the last date set forth in Section 8.02(a) through which Seller would be required to post and maintain any Performance Assurance, to the extent Performance

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Assurance would be applicable, under this Agreement, or (iii) the date an arbitration award has been issued in the EDR proceeding holding that Seller owes no amounts to SCE in respect of the dispute.

Any obligation by SCE to suspend its termination rights or netting rights during the Tolling Period as set forth in Section 12.03(a)(iv) shall be terminated immediately in the event Seller fails to post or maintain the EDR Collateral Amount as required in this Section 12.03(a)(v).

(b) Alternative Dispute Resolution.

Either Party may initiate binding arbitration with respect to the matters first submitted to mediation by providing Notice in accordance with Section 10.08 of a demand for binding arbitration ("ADR") before an Arbitrator at any time following the unsuccessful conclusion of the mediation provided for in Section 12.02 above.

The Parties will cooperate with one another in selecting the Arbitrator within sixty (60) days after Notice of the demand for ADR and shall further cooperate in scheduling the Arbitration to commence no later than one hundred eighty (180) days from the date of Notice of the demand. ADR shall proceed in accordance with the provisions of Section 12.04.

This ADR procedure may be used to resolve EDR Eligible Disputes (in lieu of EDR) and Financial Defaults, provided that in neither case shall the netting rights or the termination rights of the Party requesting payment or claiming the default be suspended.

12.04 General Provisions for Arbitration.

- (a) All EDR and ADR (collectively, "Arbitration") shall be before a single, neutral arbitrator (the "Arbitrator"). To be qualified as an Arbitrator, each candidate must be a retired judge of a trial court of any state or federal court, or retired justice of any appellate or supreme court.
- (b) With respect to ADR, unless otherwise agreed to by the Parties, the individual acting as the Mediator shall be disqualified from serving as the Arbitrator in the ADR dispute, although the Arbitrator may be another member of the JAMS panel of neutrals or such other panel of neutrals from which the Parties have agreed to select the Mediator.

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- (c) If, notwithstanding their good faith efforts, the Parties are unable to agree upon a mutually-acceptable Arbitrator, the Arbitrator shall be appointed as provided for in California Code of Civil Procedure section 1281.6.
- (d) Upon Notice of a Party's demand for Arbitration, such Dispute submitted to Arbitration, including the determination of the scope or applicability of this agreement to arbitrate, shall be determined by binding Arbitration before the Arbitrator, in accordance with the laws of the State of California, without regard to principles of conflicts of laws.
- (e) Except as provided for herein, the Arbitration shall be conducted by the Arbitrator in accordance with the rules and procedures for arbitration of complex business disputes for the organization with which the Arbitrator is associated; absent the existence of such rules and procedures, the Arbitration shall be conducted in accordance with the California Arbitration Act, California Code of Civil Procedure Section 1280 *et seq.* and California procedural law (including the Code of Civil Procedure, Civil Code, Evidence Code and Rules of Court, but excluding local rules).
- (f) Notwithstanding the rules and procedures that would otherwise apply to the Arbitration, and unless the Parties agree to a different arrangement, the place of the Arbitration shall be in Los Angeles County, California.
- (g) Also notwithstanding the rules and procedures that would otherwise apply to the Arbitration, and unless the Parties agree to a different arrangement, discovery will be limited as follows:
 - (i) Before discovery commences, the Parties shall exchange an initial disclosure of all documents and percipient witnesses which they intend to rely upon or use at any Arbitration proceeding (except for documents and witnesses to be used solely for impeachment).
 - (ii) The initial disclosure shall occur within thirty (30) days after the initial conference with the Arbitrator or at such time as the Arbitrator may order.
 - (iii) Discovery may commence at any time after the Parties' initial disclosure.
 - (iv) The Parties will not be permitted to propound any interrogatories or requests for admissions.
 - (v) Discovery shall be limited to twenty-five (25) document requests (with no subparts), three (3) lay witness depositions, and three (3) expert

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witness depositions (unless the Arbitrator holds otherwise following a showing by the Party seeking the additional documents or depositions that the documents or depositions are critical for a fair resolution of the Dispute or that a Party has improperly withheld documents).

- (h) Each Party is allowed a maximum of three (3) expert witnesses, excluding rebuttal experts.
- (i) Within forty-five (45) days after the initial disclosure, or at such other time as the Arbitrator may order, the Parties shall exchange a list of all experts upon which they intend to rely at the Arbitration proceeding.
- (j) Within fifteen (15) days after the initial expert disclosure, the Parties may designate a maximum of two (2) rebuttal experts.
- (k) Unless the Parties agree otherwise, all direct testimony shall be in form of affidavits or declarations under penalty of perjury.
- (l) Each Party shall make available for cross examination at the Arbitration hearing its witnesses whose direct testimony has been so submitted.

12.05 Arbitration Awards.

Judgment on the award may be entered in any court having jurisdiction. In any award, the Arbitrator shall allocate all of the costs of the binding Arbitration (other than each Party's individual attorneys' fees and costs related to the Party's participation in the Arbitration, which fees and costs shall be borne by such Party), including the fees of the Arbitrator and any expert witnesses (collectively, the Arbitration Costs"), against the Party who did not prevail.

Until such award is made, however, the Parties shall share equally in paying the costs of the Arbitration.

In the case of EDR, the Arbitrator also shall allocate against the Party who did not prevail the prevailing Party's reasonable attorneys' fees and expenses related to the prevailing Party's participation in the Arbitration. Further, if the Arbitrator determines that the non-prevailing Party's position related to the dispute (i.e., either initiating or opposing the Payment Request or Notice of default) was asserted in bad faith, the Arbitrator may award to the prevailing Party an additional penalty in an amount as determined by the Arbitrator in his or her discretion.

12.06 Waivers.

SELLER AGREES THAT SELLER WILL NOT AT ANY TIME INSIST UPON, PLEAD, CLAIM OR TAKE THE BENEFIT OR ADVANTAGE OF ANY LAW

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NOW OR HEREAFTER IN FORCE REQUIRING FORECLOSURE OF ANY RIGHTS GRANTED TO SCE BY SELLER UNDER ANY DEED OF TRUST BEFORE TAKING ANY ACTION DESCRIBED IN SECTIONS 12.02 AND 12.03 HEREOF.

**** End of ARTICLE TWELVE ****

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QFID# 6310, Caithness 251 Wind LLC

In WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed as of the Effective Date first written:

CAITHNESS 251 WIND LLC,
a Delaware limited liability company

**SOUTHERN CALIFORNIA EDISON
COMPANY,**

a California corporation

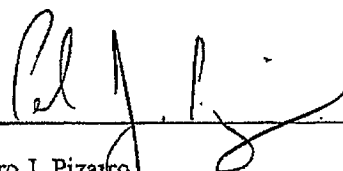
By:



Leslie J. Gelber
President and
Chief Operating Officer

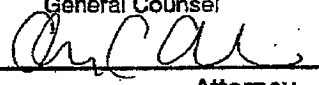
Date: 11-15-06

By:



Pedro J. Pizarro
Senior Vice President,
Power Procurement

Date: Nov. 15, 2006

APPROVED
STEPHEN E. PICKETT
Sr. Vice President and
General Counsel
By 
Attorney
November 15, 2006

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EXHIBIT A

Definitions

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EXHIBIT A*Definitions*

The following terms shall have the following meaning for purposes of this Agreement.

1. "251 PPAs" means, collectively, the Monolith X PPA, the Monolith XI PPA, the Monolith XII PPA, and the Monolith XIII PPA.
2. "Actual Availability Report" has the meaning set forth in Section 3.24.
3. "Actual Site Wind Speeds" means the Site wind speeds and other meteorological conditions that are measured and recorded by the Meteorological Equipment.
4. "ADR" has the meaning set forth in Section 12.03(b).
5. "Affiliate" means, with respect to a Party, any entity that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with such Party.

For this purpose, "control" means the direct or indirect ownership of fifty percent (50%) or more of the outstanding capital stock or other equity interests having ordinary voting power.

6. "Agreement" has the meaning set forth in the Preamble.
7. "Applicable Laws" means all constitutions, treaties, laws, ordinances, rules, regulations, interpretations, permits, judgments, decrees, injunctions, writs and orders of any Governmental Authority that apply to either or both of the Parties, the Generating Facility or the terms of this Agreement.
8. "Arbitrator" has the meaning set forth in Article Twelve.
9. "Authority to Construct" means an application or other appropriate request with the appropriate Air Pollution Control District for determination that construction of the Generating Facility is authorized under applicable air pollution control laws and regulations.
10. "Availability Forecasts" has the meaning set forth in Exhibit D.
11. "Availability Update" has the meaning set forth in Exhibit D.
12. "Availability Workbook" has the meaning set forth in Exhibit T.

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13. "Baseline Infrastructure Costs" means the estimated infrastructure costs of \$35,000 for, and consistent with, the Baseline Infrastructure Configuration, as set forth in Exhibit R.
14. "Baseline Infrastructure Configuration" means the metering infrastructure plan, appropriate scope documentation and one-line diagrams of the Generating Facility, expected to be installed by Seller for purposes of its original bid to SCE with respect to this Agreement submitted on December 2, 2005 (and as modified on December 14, 2005), all as set forth in Exhibit R.
15. "Bankrupt" means with respect to any entity, such entity:
 - a) Files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it;
 - b) Makes an assignment or any general arrangement for the benefit of creditors;
 - c) Otherwise becomes bankrupt or insolvent (however evidenced);
 - d) Has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets; or
 - e) Is generally unable to pay its debts as they fall due.
16. "Business Day" means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday, or the Friday following Thanksgiving. A Business Day shall begin at 8:00 a.m. and end at 5:00 p.m. local time for the Party sending the Notice or payment or performing a specified action.
17. "Capacity Attributes" means any and all current or future defined characteristics, certificates, tag, credits, ancillary service attributes, or accounting constructs, howsoever entitled, including any accounting construct counted toward any resource adequacy requirements, attributed to or associated with the Generating Facility or any unit of generating capacity of the Generating Facility during the Term.
18. "CEC" means the California Energy Commission.
19. "CEC Certification and Verification" means that the CEC has certified (or, with respect to periods before the Generating Facility has been constructed, that the CEC has pre-certified) that the Generating Facility is an ERR for purposes of the RPS Legislation and that all electric energy produced by the Generating Facility qualifies as generation from an ERR for purposes of the RPS Legislation.

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20. "Change of Control" means any assignment or other transfer of fifty percent (50%) or more of the voting control of Seller (as of the Effective Date).
21. "Change in ISO Tariff" means that the ISO Tariff has been changed and such change has a material adverse impact on either Party, or the ISO has been dissolved or replaced and any successor to the ISO operates under rules, protocols, procedures or standards that differ in a material respect from the ISO Tariff, after the Effective Date.
22. "Claiming Party" has the meaning set forth in Section 5.02.
23. "Claims" means all third party claims or actions, threatened or filed and, whether groundless, false, fraudulent or otherwise, that directly or indirectly relate to the subject matter of an indemnity, and the resulting losses, damages, expenses, attorneys' fees and court costs, whether incurred by settlement or otherwise, and whether such claims or actions are threatened or filed prior to or after the termination of this Agreement.
24. "Collateral Assignment Agreement" has the meaning set forth in Section 10.05.
25. "Common Wind Turbine Defect" means a common design or manufacturing defect in more than one of the new Wind Turbines at the Generating Facility that is:
 - i) Referenced by the Wind Turbine manufacturer in a service bulletin issued to its customers as a service, warranty or maintenance issue in wind turbines of the same model as the Wind Turbines; or
 - ii) Identified in a report from a third-party expert employed by Seller and reasonably acceptable to SCE concluding that a defect exists for the Wind Turbines which is due to a common design or manufacturing defect for wind turbines of the same model as the Wind Turbines.
26. "Conditional Use Permit" means, collectively, all permit(s) which Seller is required to obtain from Governmental Authorities, other than the Authority to Construct, to enable Seller to construct and Operate the Generating Facility.
27. "Control Area" means the electric power system (or combination of electric power systems) under the operational control of the ISO or any other electric power system under the operational control of another organization vested with authority comparable to that of the ISO.
28. "Costs" means, with respect to the Non-Defaulting Party, brokerage fees, commissions, legal expenses and other similar third party transaction costs and

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- expenses reasonably incurred by such Party in entering into any new arrangement which replaces this Agreement.
29. "Cover Damages" has the meaning set forth in Section 6.02(c).
30. "CPUC" means the California Public Utilities Commission.
31. "CPUC Approval" means a final and non-appealable order of the CPUC, without conditions or modifications unacceptable to the Parties, or either of them, which contains the following terms:
- a) Approves this Agreement in its entirety, including payments to be made by SCE, subject to CPUC review of SCE's administration of the Agreement;
 - b) Finds that any procurement pursuant to this Agreement is procurement from an eligible renewable energy resource for purposes of determining SCE's compliance with any obligation that it may have to procure eligible renewable energy resources pursuant to the RPS Legislation, CPUC Decision 03-06-071, or other Applicable Law; and
 - c) Finds that any procurement pursuant to this Agreement constitutes incremental procurement or procurement for baseline replenishment by SCE from an eligible renewable energy resource for purposes of determining SCE's compliance with any obligation to increase its total procurement of eligible renewable energy resources that it may have pursuant to the RPS Legislation, CPUC Decision 03-06-071, or other Applicable Law.
- CPUC Approval will be deemed to have occurred on the date that a CPUC decision containing such findings becomes final and non-appealable.
32. "Credit Rating" means with respect to any entity, on the relevant date of determination, the respective ratings then assigned to such entity's unsecured, senior long-term debt or deposit obligations (not supported by third party credit enhancement) by S&P or Moody's.
- If no rating is assigned to such entity's unsecured, senior long-term debt or deposit obligation by either S&P or Moody's,
- then* "Credit Rating" shall mean the general corporate credit rating or long-term issuer rating assigned by S&P or Moody's, as the case may be.
33. "Cross Default Amount" means the dollar amount set forth in Section 1.07 (c).
34. "Current Turbine Costs" has the meaning set forth in Section 2.04(a)(v)(1).

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35. "Daily Delay Liquidated Damages" has the meaning set forth in Section 3.04(b).
36. "Default Amount" has the meaning set forth in Section 6.02(c).
37. "Defaulting Party" means the Party causing or affected by any occurrence or event which, with the giving of notice or the lapse of time or both, would constitute an Event of Default by such Party under this Agreement.
38. "Deficient Energy Delivery Amount" has the meaning set forth in Item 4 of Exhibit F.
39. "Deficient Energy Delivery Amount Calculation Result" has the meaning set forth in Item 5 of Exhibit F.
40. "Deficient Energy Delivery Amount Maximum" has the meaning set forth in Item 6 of Exhibit F.
41. "Delivered Amounts" means the Metered Amounts less Delivery Losses.
42. "Delivery Losses" means all electrical losses, if any, occurring between the ISO Approved Meter and the Delivery Point and electrical losses occurring over the ISO Grid as such losses are assigned by the ISO to the Generating Facility including if applicable, but not limited to:
- a) If the ISO Approved Meter is not installed on the high voltage side of the Generating Facility's substation bus bar, transformer and other electrical losses occurring between the ISO Approved Meter and the high voltage side of the Generating Facility's substation bus bar;
 - b) Any applicable DLF or TLF, or if no DLF is applicable,
then electrical losses between the high voltage side of the Generating Facility's substation bus bar and the ISO Grid; and
 - c) Electrical losses determined by utilizing the GMM, or TMM if applicable, assigned to the Generating Facility.
43. "Delivery Point" means ISO Zone SP-15.

Notwithstanding anything to the contrary in Article Eleven, after a Change in ISO Tariff that impacts the trading points or trading rules thereof in ISO Zone SP-15, the "Delivery Point" shall be a valid Scheduling point in SP-15 that is either the SCE load aggregation point, if defined by the ISO; or if an SCE load aggregation point is not defined by the ISO, the ISO-defined trading hub designated by SCE as most closely representing SCE's bundled customer load.

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44. "Demonstrated Nameplate Contract Capacity" has the meaning set forth in Section 3.04(d).
45. "Demonstrated New Turbine Nameplate Capacity" has the meaning set forth in Section 3.04(d).
46. "Development Security" means the fee described in Section 3.04(a).
47. "Disclosing Party" has the meaning set forth in Section 10.10.
48. "Disclosure Order" has the meaning set forth in Section 10.10.
49. "Dispute" has the meaning set forth in Article Twelve.
50. "Disputing Party" has the meaning set forth in Section 12.03(a)(ii).
51. "Disqualified Stock" means any capital stock that, by its terms (or by the terms of any security into which it is convertible, or for which it is exchangeable, in each case at the option of the holder of the capital stock), or upon the happening of any event, matures or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise, or redeemable at the option of the holder of the capital stock, in whole or in part, on or prior to the date that is ninety-one (91) days after the expiration of the Term.
52. "DLF" means a measure of all net electrical losses as determined by the CPUC associated with the transmission of electric energy through the electric system from the high voltage side of the Generating Facility's substation bus bar to the interface with the ISO Grid, also known as the distribution loss factor.
53. "Early Termination Date" has the meaning set forth in Section 6.02.
54. "EDR" has the meaning set forth in Section 12.03(a).
55. "EDR Collateral Amount" is the amount set forth in Section 1.09 to be posted by Seller pursuant to Section 12.03(a)(ii) and Section 12.03(a)(v).
56. "EDR Decision Deadline" has the meaning set forth in Section 12.03(a)(iii).
57. "EDR Eligible Dispute" has the meaning set forth in Section 12.03(a).
58. "Effective Date" has the meaning set forth in the Preamble.
59. "Election Date" has the meaning set forth in Section 6.02(c).
60. "Emergency" means:

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- a) An actual or imminent condition or situation which jeopardizes SCE Electric System Integrity or the integrity of other systems to which SCE is connected, as determined by SCE in its reasonable discretion, or any condition so defined and declared by the ISO; or
 - b) An emergency condition as defined under the interconnection agreement and any abnormal interconnection or system condition that requires automatic or immediate manual action to prevent or limit loss of SCE's load or generation supply, that could adversely affect the reliability of the SCE system or generation supply, that could adversely affect the reliability of any interconnected system, or that could otherwise pose a threat to public safety.
61. "Energy Deviations" means the absolute value of the difference, in kWh, in any Settlement Interval between:
- a) The Final Hour-Ahead Schedule for the hour of the Settlement Interval divided by the number of Settlement Intervals in the hour; and
 - b) Delivered Amounts for the Settlement Interval.
62. "Energy Payment" means a payment made by SCE to Seller calculated in accordance with Section 4.02 for electric energy delivered to SCE by Seller in accordance with the terms of this Agreement.
63. "Energy Payment Allocation Factor" has the meaning set forth in Exhibit K.
64. "Energy Price" means the energy price set forth in Section 1.06.
65. "Energy Replacement Damage Amount" has the meaning set forth in Exhibit F.
66. "Environmental Attributes" mean any and all current or future credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributed to the generation from the Generating Facility and its displacement of conventional energy generation.

Environmental Attributes include but are not limited to:

- a) Any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SO_x), nitrogen oxides (NO_x), carbon monoxide (CO) and other pollutants;
- b) Any avoided emissions of carbon dioxide (CO₂), methane (CH₄) and other greenhouse gases (GHGs) that have been determined by any applicable governmental body or association of governmental representatives, such as, but not limited to, the United Nations Intergovernmental Panel on Climate

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Change, to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere; and

- c) The reporting rights to these avoided emissions such as "Green Tag Reporting Rights." Green Tag Reporting Rights are the right of a Green Tag Purchaser to report the ownership of accumulated Green Tags in compliance with federal or state law, if applicable, and to a federal or state agency or any other party at the Green Tag Purchaser's discretion, and include without limitation those Green Tag Reporting Rights accruing under Section 1605(b) of The Energy Policy Act of 1992 and any present or future federal, state, or local law, regulation or bill, and international or foreign emissions trading program.

Green Tags are accumulated on kWh basis and one Green Tag represents the Environmental Attributes associated with one (1) MWh of energy.

Environmental Attributes do *not* include:

- d) Any energy, capacity, reliability or other power attributes from the Generating Facility;
 - e) Production Tax Credits associated with the construction or Operation of the Generating Facility and other financial incentives in the form of credits, reductions, or allowances associated with the Generating Facility that are applicable to a state or federal income taxation obligation;
 - f) Fuel-related subsidies or "tipping fees" that may be paid to Seller to accept certain fuels, or local subsidies received by Seller for the destruction of particular pre-existing pollutants or the promotion of local environmental benefits; or
 - g) Emission reduction credits encumbered or used by the Generating Facility for compliance with local, state, or federal operating and/or air quality permits.
67. "Equitable Defense" means any bankruptcy, insolvency, reorganization and other laws affecting creditors' rights generally, and with regard to equitable remedies, the discretion of the court before which proceedings to obtain same may be pending.
68. "ERR" means a generating facility that qualifies as an eligible renewable energy resource for purposes of the RPS Legislation.
69. "Estimated Restart Date" has the meaning set forth in Section 6.02(c).
70. "Estimated Turbine Costs" has the meaning set forth in Section 2.04(a)(v)(1)(a).
71. "Event of Default" has the meaning set forth in Section 6.01.

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72. "Event of Deficient Energy Deliveries" has the meaning set forth in Exhibit F.
73. "Extraordinary SCE Force Majeure" means a Force Majeure as to which SCE is the Claiming Party that results in SCE not accepting electric energy for more than ten (10) consecutive days during which Seller was prepared and able to deliver the Delivered Amounts at the Delivery Point.
74. "Federal Funds Effective Rate" means the rate for that day opposite the caption "Federal Funds (effective)" as set forth in the weekly statistical release as H.15(519), or any successor publication, published by the Board of Governors of the Federal Reserve System.
75. "Federal Production Tax Credit Legislation" means validly enacted Federal legislation extending the applicability and rate of the renewable energy production credit (45 U.S.C. § 45) to owners of generating facilities which use wind to produce electric energy on terms no less favorable to owners of wind generating facilities than those available with respect to such facilities placed in service on or after January 1, 2006 and before January 1, 2008 pursuant to the law governing Production Tax Credits as in effect on the Effective Date.
76. "FERC" means the Federal Energy Regulatory Commission.
77. "Final ISO4 Transition Plan" shall have the meaning set forth in 2.02(e)(ii).
78. "Final Hour-Ahead Schedule" has the meaning as set forth in the ISO Tariff.
79. "Final Wind Report" means the unabridged and unredacted final report concerning the electric energy producing potential of the Site prepared by an independent engineer which shall be obtained by Seller as set forth in Section 3.21(b)(x).
80. "Financial Defaults" means the following defaults that are not eligible for EDR: defaults under (i) Section 6.01(d) (Credit Default); (ii) Section 6.01(g) (Guarantor Default) (other than Section 6.01(g)(i)); (iii) Section 6.01(h)(iii) (Restricted Financing Default); and (iv) Section 6.01(m) (Security Document Default).
81. "Firm Operating Period Start Date" has the meaning set forth in Section 1.04.
82. "Firm Operating Period Year" means a twelve (12) month period beginning on the Firm Operating Period Start Date and each successive twelve (12) month period thereafter.
83. "Firm Operating Period Year Estimate of Metered Amounts" means the result calculated by the Generating Facility Performance Model, as determined below:

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FIRM OPERATING PERIOD YEAR ESTIMATE OF METERED AMOUNTS, in MWh

$$= \sum_{\substack{\text{First Settlement} \\ \text{Interval of the Firm} \\ \text{Operating Period Year}}}^{\substack{\text{Last Settlement} \\ \text{Interval of the Firm} \\ \text{Operating Period Year}}} A$$

Where:

A = The estimate of Metered Amount quantities for all Settlement Intervals that are not Lost Output Settlement Intervals derived from the Generating Facility Power Curve by using the Actual Site Wind Speeds, in MWh.

- 84. "Forecast" or "Forecasting" means the action of Seller in preparing and submitting to SCE, in accordance with Exhibit D, the Availability Forecasts.
- 85. "Force Majeure" means (A) a Common Wind Turbine Defect or (B) any occurrence that was not anticipated as of the Effective Date that:
 - a) In whole or in part:
 - i) Delays a Party's performance under this Agreement;
 - ii) Causes a Party to be unable to perform its obligations; or
 - iii) Prevents a Party from complying with or satisfying the conditions of this Agreement;
 - b) Is not within the control of, or is not the result of the negligence of, that Party; and
 - c) The Party has been unable to overcome by the exercise of due diligence, including, but not limited to, an act of God, flood, drought, earthquake, storm, fire, pestilence, lightning and other natural catastrophes, epidemic, war, riot, civil disturbance or disobedience, terrorism, sabotage, strike or labor dispute, or actions or inactions of any Governmental Authority, or curtailment or

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reduction in deliveries at the direction of a Transmission Provider or the ISO, except as set forth below.

Force Majeure does not include:

- a) The lack of wind, sun or other fuel source of an inherently intermittent nature; or
- b) The lack of economic resources of a Party; nor
- c) Curtailment or reduction in deliveries at the direction of a Transmission Provider or the ISO when the basis of the curtailment or reduction in deliveries ordered by a Transmission Provider or the ISO is congestion arising in the ordinary course of operations of the Transmission Provider's system or the ISO Grid, including congestion caused by outages or capacity reductions for maintenance, construction or repair.

86. "Forward Settlement Amount" means the Non-Defaulting Party's Costs and Losses, on the one hand, netted against its Gains, on the other.

If the Non-Defaulting Party's Costs and Losses exceed its Gains, *then* the Forward Settlement Amount shall be an amount owing to the Non-Defaulting Party.

If the Non-Defaulting Party's Gains exceed its Costs and Losses, *then* the Forward Settlement Amount shall be zero dollars (\$0).

The Forward Settlement Amount shall not include consequential, incidental, punitive, exemplary or indirect or business interruption damages.

87. "Gains" means, with respect to any Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from the termination of this Agreement for the remaining Term of this Agreement, determined in a commercially reasonable manner.

Factors used in determining the economic benefit to a Party may include, without limitation, reference to information supplied by one or more third parties, which shall exclude Affiliates of the Non-Defaulting Party, including without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, Market Price Referents set by the CPUC, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transaction at liquid trading hubs (e.g., NYMEX), all of which should be calculated for the remaining Term of this Agreement, but shall include the value of Environmental Attributes, Capacity Attributes and Resource Adequacy Benefits.

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Only if the Non-Defaulting Party is unable, after using commercially reasonable efforts, to obtain third party information to determine the gain of economic benefits,

then the Non-Defaulting Party may use information available to it internally suitable for such purpose in accordance with prudent industry practices.

88. "Generating Facility" means Seller's electric generating facility as more particularly described in Exhibit B, together with all materials, equipment systems, structures, features and improvements necessary to produce electric energy at such facility, excluding the Site, land rights and interests in land.
89. "Generating Facility Availability" means the Wind Turbine availability in any Firm Operating Period Year determined in accordance with the procedures and methodology set forth in the Wind Turbine Supply Contract.
90. "Generating Facility Capacity" means the Generating Facility's total rated electric energy generating capacity determined by the total of the manufacturer's nameplate ratings of all installed Wind Turbines, consistent with Prudent Electrical Practices and accepted industry standards, as indicated on the nameplates physically attached to the individual Wind Turbine generators.
91. "Generating Facility Performance Model" means a computer program developed by the Independent Performance Engineer that:
- a) Calculates the Firm Operating Period Year Estimate of Metered Amounts; and
 - b) Produces a Generating Facility Performance Model Report.
92. "Generating Facility Performance Model Report" means a written report produced by Seller for each Firm Operating Period Year, based upon the results from the Generating Facility Performance Model, which includes:
- a) A Firm Operating Period Year Estimate of Metered Amounts;
 - b) A log of Wind Turbine availability during each Settlement Interval in the applicable Firm Operating Period Year;
 - c) A histogram of Metered Amounts:
 - i) Recorded for all Firm Operating Period Years;
 - ii) Calculated by using the Generating Facility Power Curve and the P1, P50 and P99 wind profiles included in the Final Wind Report; and

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- iii) Calculated by using the Wind Turbine manufacturer's power curves for a single wind turbine and the P50 wind profiles included in the Final Wind Report and then multiplying the results by the number of Wind Turbines installed at the Generating Facility.
 - d) A chart showing values sorted from largest to smallest of Metered Amounts:
 - i) Recorded for all Firm Operating Period Years;
 - ii) Calculated by using the Generating Facility Power Curve and the P1, P50 and P99 wind profiles included in the Final Wind Report; and
 - iii) Calculated by using the Wind Turbine manufacturer's power curves for a single wind turbine and the P50 wind profiles included in the Final Wind Report and then multiplying the results by the number of Wind Turbines installed at the Generating Facility.
 - e) A histogram based upon the:
 - i) Actual Site Wind Speeds for all Firm Operating Period Years; and
 - ii) P1, P50 and P99 wind speeds included in the Final Wind Report; and
 - f) Electronic copy of the Generating Facility Performance Model computer program used to produce the report.
93. "Generating Facility Power Curve" means a table, chart or mathematical algorithm, developed by the Independent Performance Engineer, which is:
- a) Designed to translate Actual Site Wind Speeds to estimated Metered Amounts;
 - b) Capable of being integrated into the Generating Facility Performance Model; and
 - c) Derived from the Metered Amounts recorded during all Settlement Intervals:
 - i) When all of the Wind Turbines are available to produce electric energy;
 - ii) That are not Lost Output Settlement Intervals; and
 - iii) That occurred during the second and third Firm Operating Period Years.

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94. "GMM(s)" means the generation meter multipliers as determined by the ISO representing the calculation of all electrical losses assigned to the Generating Facility associated with the transmission of electric energy delivered by the Generating Facility over the ISO Grid.

As of the Effective Date, such values are posted by the ISO on its website. The values used in the Agreement will be those appearing on the ISO website on the third (3rd) Business Day of the calendar month following the month for which such values are being applied.

95. "Governmental Authority" means:
- a) Any federal, state, local, municipal or other government;
 - b) Any governmental, regulatory or administrative agency, commission, or other authority lawfully exercising or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power; or
 - c) Any court or governmental tribunal.
96. "Governmental Charges" has the meaning as set forth in Section 9.02.
97. "Guarantor" has the meaning set forth in Section 1.08.
98. "Guaranty Agreement" means, if a Guarantor has been identified, the guaranty agreement from the Guarantor in the form attached hereto as Exhibit I.
99. "H&S" means Helzel and Schwarzhoff, a California limited general partnership.
100. "Independent Performance Engineer" means a recognized third party expert experienced with the:
- a) Performance characteristics of wind powered electric energy generators that will be installed at the Generating Facility;
 - b) Design and construction of wind powered generating facilities;
 - c) Specification of meteorological instruments;
 - d) Structure and requirements of the ISO's PIRP;
 - e) Development of generating facility power curves; and
 - f) Development of generating facility performance models.

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101. "Initial Operating Period Start Date" has the meaning set forth in Section 2.03(b).
102. "Initial Operation" means the Generating Facility has achieved the requirements under Section 2.03(b).
103. "Initial Synchronization" means the date upon which the Generating Facility is initially synchronized with Seller's Transmission Provider.
104. "Intended Cure Date" has the meaning set forth in Section 6.02(c).
105. "Interest Rate" means an annual rate equal to:
 - (a) The rate published in The Wall Street Journal as the "Prime Rate" (or, if more than one rate is published, the arithmetic mean of such rates) as of the date payment is due; plus
 - (b) Two percentage points (2%);provided, however, that in no event shall the Interest Rate exceed the maximum interest rate permitted by Applicable Laws.
106. "ISO" means the California Independent System Operator Corporation or successor entity that dispatches certain generating units and loads and controls the transmission facilities of entities that:
 - a) Own, operate and maintain transmission lines and associated facilities or have entitlements to use certain transmission lines and associated facilities; and
 - b) Have transferred to the ISO or its successor entity operational control of such facilities or entitlements.
107. "ISO Approved Meter" has the meaning set forth in Section 3.06.
108. "ISO Approved Quantity" of electric energy means the quantity of electric energy in a schedule request made by SCE acting as the Scheduling Coordinator, and as approved by the ISO in its final schedule published in accordance with the ISO Tariff.
109. "ISO Change Cost" has the meaning set forth in Section 11.02(a).
110. "ISO Change Cost Payment" has the meaning set forth in Section 11.02(b).
111. "ISO Change Cost Threshold Amount" has the meaning set forth in Section 11.04.
112. "ISO Charges" means the debits, costs, penalties and interest that are directly assigned by the ISO to the ISO Global Resource ID(s) for the Generating Facility for,

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- or attributable to, scheduling or deliveries from the Generating Facility under this Agreement.
113. "ISO Declared Over-Generation Condition" mean a ISO declared condition on the ISO Grid where the sum of the desired generation output of all of the Scheduling Coordinators in the Control Area, absent mitigation, would be greater than the system load.
 114. "ISO EIRP" has the meaning set forth in Section 3.22.
 115. "ISO Forecasted Over-Generation Condition" mean a ISO forecasted condition on the ISO Grid where the sum of the desired generation output of all of the Scheduling Coordinators in the Control Area, absent mitigation, would be greater than the system load.
 116. "ISO Global Resource ID" or "GRI" means the number or name assigned by the ISO to the ISO Approved Meter.
 117. "ISO Grid" means the system of transmission lines and associated facilities and entitlements of the participating transmission owners that have been placed under the ISO's operational control.
 118. "ISO PIRP Charges" means those ISO charges under the Participating Intermittent Resource Program identified as charge types 701, 711 and 721 (as of the Effective Date) as such charges are defined in the ISO Tariff, plus any forecast fee imposed by the ISO on Seller not included in such charges, or any successor charges that accomplish a similar purpose to any of the foregoing charges.
 119. "ISO Sanctions" means any sanction directly assigned by the ISO to the ISO Global Resource ID(s) for the Generating Facility, or attributable to, scheduling or deliveries from the Generating Facility under this Agreement.
 120. "ISO Tariff" means the California Independent System Operator Corporation Operating Agreement and Tariff, including the rules, protocols, procedures and standards attached thereto, as the same may be amended or modified from time-to-time and approved by FERC.
 121. "JAMS" has the meaning set forth in Article Twelve.
 122. "kW" means a kilowatt of electric generating capacity.
 123. "kWh" means a kilowatt-hour of electric energy.

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124. "Lease" means one or more agreements whereby Seller leases the Site(s) described in Section 1.01(b) from a third party, the term of which lease begins on or before the commencement of the Term and extends at least through the last day of the Term.
125. "Lender" means any financial institution(s) or successor(s) in interest or assignees that provide(s) development, bridge, construction, permanent debt (including debt financed on a Portfolio basis) or tax equity financing or refinancing for the Generating Facility to Seller (or any affiliate of Seller).
126. "Lender Consent" has the meaning set forth in Section 2.02(f).
127. "Letter of Credit" means an irrevocable, nontransferable standby letter of credit issued by a U.S. commercial bank or a U.S. branch of a foreign bank with such bank having a Credit Rating of at least "A-" from S&P and "A3" from Moody's, substantially in the form of Exhibit M and reasonably acceptable to SCE.

All Letter of Credit costs shall be borne by Seller.

128. "Letter of Credit Default" means with respect to a Letter of Credit, the occurrence of any of the following events:
- a) The issuer of such Letter of Credit fails to maintain a Credit Rating of at least "A-" by S&P and "A3" by Moody's;
 - b) The issuer of the Letter of Credit fails to comply with or perform its obligations under such Letter of Credit;
 - c) The issuer of such Letter of Credit disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges the validity of, such Letter of Credit;
 - d) Such Letter of Credit fails or ceases to be in full force and effect at any time,
 - e) Seller fails to provide an extended or replacement Letter of Credit within twenty (20) Business Days before such Letter of Credit expires or terminates;
 - f) The issuer of such Letter of Credit becomes Bankrupt;

provided that, no Letter of Credit Default shall occur or be continuing in any event with respect to a Letter of Credit after the time such Letter of Credit is required to be canceled or returned to a Party in accordance with the terms of this Agreement.

129. "Local Business Day" means, a Business Day on which commercial banks are open for business (a) in relation to any payment, in the place where the relevant account is located and (b) in relation to any notice or other communication, in the city specified

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in the address for notice provided by the recipient, except for the Friday immediately following the U.S. Thanksgiving holiday or a Federal Reserve Bank holiday.

130. "Losses" means, with respect to any Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from termination of this Agreement for the remaining Term of this Agreement, determined in a commercially reasonable manner.

Factors used in determining economic loss to a Party may include, without limitation, reference to information supplied by one or more third parties, which shall exclude Affiliates of the Non-Defaulting Party, including without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, Market Price Referents set by the CPUC, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transaction at liquid trading hubs (e.g., NYMEX), all of which should be calculated for the remaining Term of this Agreement and shall include the value of Environmental Attributes, Capacity Attributes and Resource Adequacy Benefits.

Only if the Non-Defaulting Party is unable, after using commercially reasonable efforts, to obtain third party information to determine the loss of economic benefits, *then* the Non-Defaulting Party may use information available to it internally suitable for such purpose in accordance with prudent industry practices.

131. "Lost Output" means the sum of the Metered Amounts over the relevant measurement period that the Generating Facility was available to produce and could reasonably have been expected to deliver, based upon historical performance and/or actual operating conditions, but was not delivered due to:

- a) Force Majeure, *provided* that a Common Wind Turbine Defect event of Force Majeure shall be considered as Lost Output only from the date claimed (and reasonably substantiated) as an event of Force Majeure by Seller in its Seller Common Wind Turbine Defect Report submitted to SCE pursuant to Section 5.02(b) to support such proposed event of Force Majeure, through the earlier of: (i) the date that the manufacturer of the affected Wind Turbines has cured the Common Wind Turbine Defect, as evidenced by publications from the manufacturer or other evidence reasonably demonstrating that the manufacturer has cured the Common Wind Turbine Defect; or (ii) the date that Seller (if Seller has developed a plan to cure such defect) has cured the Common Wind Turbine Defect by installing replacement components in the affected Wind Turbines;

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- b) An Event of Default where SCE is the Defaulting Party, Seller has elected to mitigate its damages under Section 6.02(c) and the Intended Cure Date has not yet occurred; or
 - c) A curtailment or reduction of deliveries ordered or caused by the ISO, or SCE acting as a Transmission Provider; provided that, the basis of such curtailment or reduction is not an event caused by Seller.
132. "Lost Output Report" means a monthly report prepared by Seller and submitted to SCE that details the cause, start time, end time and reduction in Metered Amounts associated with each Lost Output Settlement Interval during the month for which the report is prepared.
133. "Lost Output Settlement Interval" means any Settlement Interval when there is Lost Output.
134. "Low Price Point" has the meaning set forth in Section 1.09.
135. "Market Price" means the ISO Real-Time Price for uninstructed deviations or any successor price for short term imbalance energy, as such price or successor price is defined in the ISO Tariff Appendix A, which would apply to the Generating Facility, which values are, as of the Effective Date, posted by the ISO on its website.
- The values used in the Agreement will be those appearing on the ISO website on the third (3rd) Business Day of the calendar month following the month for which such prices are being applied.
136. "Market Price Referent" means the market price referent applicable to this Agreement, as determined by the CPUC in accordance with Public Utilities Code Section 399.15(c).
137. "Maximum Nameplate Contract Capacity" has the meaning set forth in Section 1.01(d).
138. "Mediator" has the meaning set forth in Article Twelve.
139. "Meteorological Equipment" has the meaning set forth in Section 3.22.
140. "Meteorological Station" has the meaning set forth in Section 3.22.
141. "Metered Amounts" means the electric energy produced by the Generating Facility and expressed in kWh that qualifies as eligible renewable energy for purposes of the RPS Legislation pursuant to CEC Certification and Verification, subject to a change in the RPS Legislation, as measured by the ISO Approved Meter.

The contents of this document are subject to restrictions on disclosure as set forth herein.

QFID# 6310, Caithness 251 Wind LLC

142. "Metering Plan" has the meaning set forth in Section 2.02(e)(iii).
143. "Milestone Schedule" means Seller's schedule to develop the Generating Facility as set forth in Exhibit G, including any revisions thereto in accordance with this Agreement.
144. "Monolith X PPA" means the Power Purchase Contract regarding QFID 6105, dated as of April 16, 1985, between SCE and Zond Systems, Inc. (or its successors in interest ZWHC and H&S), as amended from time to time.
145. "Monolith XI PPA" means the Power Purchase Contract regarding QFID 6106, dated as of April 16, 1985, between SCE and Zond Systems, Inc. (or its affiliates or successors in interest ZWHC and H&S), as amended from time to time.
146. "Monolith XII PPA" means the Power Purchase Contract regarding QFID 6107, dated as of April 16, 1985, between SCE and Zond Systems, Inc. (or its affiliates or successors in interest ZWHC and VGIV), as amended from time to time.
147. "Monolith XIII PPA" means the Power Purchase Contract regarding QFID 6108, dated as of April 16, 1985, between SCE and Zond Systems, Inc. (or its affiliates and successors in interest ZWHC and VGIV) as amended from time to time.
148. "Moody's" means Moody's Investor Services, Inc.
149. "MW" means a megawatt (or 1,000 kilowatts) of electric energy generating capacity.
150. "MWh" means a megawatt-hour (or 1,000 kilowatt-hours) of electric energy.
151. "Nameplate Contract Capacity" means the electrical generating capacity that Seller commits as of the Effective Date to install at the Site as set forth in Section 1.01(d), subject to reduction as set forth in Section 3.04(d).
152. "New Metering Infrastructure Costs" shall have the meaning set forth in Section 3.06(e).
153. "New Turbine Nameplate Capacity" has the meaning set forth in Section 3.04(a).
154. "Non-Defaulting Party" has the meaning set forth in Section 6.02.
155. "Non-Disputing Party" has the meaning set forth in Section 12.03(a)(iv)(1).
156. "Non-Financial Defaults" means all defaults other than Financial Defaults.
157. "Notice" means notices, requests, statements or payments provided in accordance with Section 10.08 and Exhibit C.

The contents of this document are subject to restrictions on disclosure as set forth herein.

QFID# 6310, Caithness 251 Wind LLC

158. "OMAR" means the Operational Metering Analysis and Reporting System operated and maintained by the ISO as the repository of settlement quality meter data or its successor.
159. "One Year Force Majeure Period" has the meaning set forth in Section 5.05.
160. "Operate," "Operating" or "Operation" means to provide (or the provision of) the engineering, purchasing, repair, supervision, training, inspection, testing, protection, use, management, replacement, retirement, reconstruction, and maintenance of or for the Generating Facility in accordance with Prudent Electrical Practices.
161. "Participating Generator Agreement" has the meaning set forth in the ISO Tariff.
162. "Participating Intermittent Resource" means an intermittent resource generating facility that is certified, and remains certified, under PIRP as set forth in the ISO Tariff.
163. "Participating Intermittent Resource Program" or "PIRP" means the ISO's intermittent resource program initially established pursuant to Amendment No. 42 of the California ISO Tariff in Docket No. ER02-922-000 or any successor program that SCE determines accomplishes a similar purpose.
164. "Party" or "Parties" has the meaning set forth in the Preamble.
165. "Payment Requests" means requests for payment amounts made pursuant to Section 3.05 (Energy Replacement Damage Amount), Section 4.04 (Energy Payments and Monthly Payment Statements), Section 6.02(c) (Default Amount and Cover Damages), Section 6.03(Termination Payment), Section 11.03(c) (ISO Change Cost Payment) and Exhibit L (Agreement Deposit), which such disputes may, at the election of the disputing Party, be resolved by EDR in accordance with the terms of this Agreement.
166. "Performance Assurance" means collateral in the amount set forth in Section 1.07 for Seller's performance during the Term in the form of either cash or Letter(s) of Credit.
167. "Performance Assurance Amount" has the meaning set forth in Section 1.07.
168. "Permits" means all applications, approvals, authorizations, consents, filings, licenses, orders, permits or similar requirements imposed by any Governmental Authority, or the ISO, in order to develop, construct, Operate, maintain, improve, refurbish and retire the Generating Facility or to Schedule and deliver the electric energy produced by the Generating Facility to SCE, including the Authority to Construct permit.

The contents of this document are subject to restrictions on disclosure as set forth herein.

QFID# 6310, Caithness 251 Wind LLC

169. "Permitted Transferee" means any entity, or any entity with a parent, that has all of the following:
- a) A tangible net worth of not less than \$50,000,000 or a Credit Rating of "BB" or better;
 - b) Experience in the ownership of power generation facilities; and
 - c) At least five (5) years of experience in the operation of power generation facilities similar to the Generating Facility (or shall have retained a reputable third party with such experience to operate and maintain the Generating Facility).
170. "Portfolio" means the single portfolio of projects and entities in which the Generating Facility is included.
171. "Product" means:
- a) All electric energy produced by the Generating Facility, net of Station Use and Delivery Losses; and
 - b) All associated Environmental Attributes, Capacity Attributes, and Resource Adequacy Benefits.
172. "Production Tax Credits" or "PTC" means production tax credits under Section 45 of the Internal Revenue Code as in effect on the Effective Date or any successor or other provision providing for a federal tax credit determined by reference to renewable electric energy produced from wind resources for which the Generating Facility is eligible.
173. "Provisional ISO4 Transition Plan" has the meaning set forth in the Recitals to this Agreement and in Exhibit B-1.
174. "Prudent Electrical Practices" means those practices, methods and acts that would be implemented and followed by a prudent operator of facilities similar to the Generating Facility in the Western United States during the relevant time period, which practices, methods and acts, in the exercise of prudent and responsible professional judgment in the light of the facts known at the time the decision was made, could reasonably have been expected to accomplish the desired result consistent with good business practices, reliability and safety.

Prudent Electrical Practices shall include, at a minimum, those professionally responsible practices, methods and acts described in the preceding sentence that comply with manufacturers' warranties, restrictions in this Agreement, and the

The contents of this document are subject to restrictions on disclosure as set forth herein.

QFID# 6310, Caithness 251 Wind LLC

requirements of Governmental Authorities, WECC standards, the ISO and Applicable Laws.

Prudent Electrical Practices shall also include taking reasonable steps to ensure that:

- a) Equipment, materials, resources, and supplies, including spare parts inventories, are available to meet the Generating Facility's needs;
 - b) Sufficient operating personnel are available at all times and are adequately experienced and trained and licensed as necessary to operate the Generating Facility properly and efficiently, and are capable of responding to reasonably foreseeable Emergency conditions whether caused by events on or off the Site;
 - c) Preventive, routine, and non-routine maintenance and repairs are performed on a basis that ensures reliable, long term and safe operation of the Generating Facility, and are performed by knowledgeable, trained, and experienced personnel utilizing proper equipment and tools;
 - d) Appropriate monitoring and testing are performed to ensure equipment is functioning as designed;
 - e) Equipment is not operated in a reckless manner, in violation of manufacturer's guidelines or in a manner unsafe to workers, the general public, or the Transmission Provider's electric system or contrary to environmental laws, permits or regulations or without regard to defined limitations such as, flood conditions, safety inspection requirements, operating voltage, current, volt ampere reactive (VAR) loading, frequency, rotational speed, polarity, synchronization, and/or control system limits; and
 - f) Equipment and components meet or exceed the standard of durability that is generally used for electric generation operations in the region and will function properly over the full range of ambient temperature and weather conditions reasonably expected to occur at the Site and under both normal and Emergency conditions.
175. "PURPA" means the Public Utility Regulatory Policies Act of 1978 (codified in part at 16 USCA §796).
176. "QF" means a "qualifying small power production facility" under PURPA and regulations of the FERC implementing PURPA.
177. "Quarterly Statement" has the meaning set forth in Section 3.05(c).

The contents of this document are subject to restrictions on disclosure as set forth herein.

QFID# 6310, Caithness 251 Wind LLC

178. "Resource Adequacy Benefits" means the rights and privileges attached to the Generating Facility that qualify to satisfy any entity's resource adequacy obligations, as those obligations are set forth in any Resource Adequacy Rulings.
179. "Resource Adequacy Rulings" means CPUC Decisions 04-01-050, 04-10-035, and 05-10-042 and any subsequent CPUC ruling or decision relating to an entity's resource adequacy obligations, or any other resource adequacy laws, rules or regulations enacted, adopted or promulgated by any applicable Governmental Authority, as such Decisions, rulings, laws, rules or regulations may be amended or modified from time to time during the Term.
180. "Restricted Financing" shall mean the incurrence of indebtedness by Seller, or any Affiliate of Seller (including any refinancing or increase of an earlier-incurred indebtedness), solely for the Portfolio which is secured, in whole or in part, by the equity interests in Seller or the assets of Seller, including, without limitation, the Generating Facility and any accounts receivable arising from the operation of the Generating Facility.
181. "RPS Legislation" means the State of California Renewable Portfolio Standard Program, as codified at California Public Utilities Code Section 399.11, et seq.
182. "S&P" means the Standard & Poor's Rating Group.
183. "SC Schedules" means the amounts initially submitted to the ISO by SCE, as Scheduling Coordinator for Seller, of expected electric energy that Seller expects to deliver to SCE in each hour.
184. "SCE" has the meaning set forth in the Preamble.
185. "SCE Penalty" means the amount charged to Seller by SCE, in accordance with Exhibit S, for hours in a calendar month when Seller does not accurately provide availability information as set forth in Exhibit D.
186. "SCE's Projected Energy Forecast" has the meaning set forth in Exhibit D.
187. "Schedule," "Scheduled" or "Scheduling" means the action of SCE in submitting the SC Schedules to the ISO and receiving the final schedules from the ISO.
188. "Scheduling Coordinator" or "SC" means SCE or any other entity certified by the ISO for the purposes of undertaking the functions specified by ISO Tariff Section 2.2.6, as amended by FERC from time-to-time.
189. "Secured Interest" has the meaning set forth in Section 8.04(a).
190. "Security Documents" has the meaning set forth in Section 8.04(a).

The contents of this document are subject to restrictions on disclosure as set forth herein.

QFID# 6310, Caithness 251 Wind LLC

191. "Seller" has the meaning set forth in the Preamble.
192. "Seller Common Wind Turbine Defect Report" means a report provided by Seller from time-to-time to SCE during the Term that includes:
- (a) Information from the Wind Turbine manufacturer, industry user groups, industry publications, independent experts or third party experts hired by Seller about any wind turbine manufacturing or design defects associated with the Wind Turbines;
 - (b) Seller's analysis of any impacts that a Common Wind Turbine Defect has on Nameplate Contract Capacity; and
 - (c) Seller's plan for minimizing the effects of a Common Wind Turbine Defect on the operation of the Generating Facility.
193. "Seller's Actual Revenue" has the meaning set forth in Exhibit P.
194. "Seller's Adjusted Revenue" has the meaning set forth in Exhibit P.
195. "Seller's Annual Energy Delivery Obligation" means the minimum quantity of Metered Amounts that Seller guarantees will be produced by the Generating Facility during each Firm Operating Period Year, as calculated in Item 2 of Exhibit F.
196. "Seller's Generating Facility Efficiency Guarantee" means the value that is:
- a) Set forth in Section 1.01(e); and
 - b) Used in the calculation of Seller's Annual Energy Delivery Obligation set forth on Exhibit F, Item 1.
197. "Seller's Transmission Consultant" means an independent consultant selected by Seller who will analyze the scope of congestion or curtailments that may be experienced by the Generating Facility during the Term, or transmission upgrades that may be required to mitigate congestion or curtailments.
198. "Settlement Interval" means any one of the six ten (10) minute time intervals beginning on any hour and ending on the next hour (e.g. 12:00 to 12:10, 12:10 to 12:20, etc.).
199. "Settlement Interval Actual Available Capacity" means the sum of the capacity, in MWs, of all generating units of the Generating Facility that were available as the end of such Settlement Interval, as indicated by the Actual Availability Report.

The contents of this document are subject to restrictions on disclosure as set forth herein.

QFID# 6310, Caithness 251 Wind LLC

200. "Site" means the real property on which the Generating Facility is, or will be located, as further described in Section 1.01(b) and Exhibit B.
201. "Site Control" means that Seller satisfies the criteria of Section 3.07(a).
202. "Site Plan" has the meaning set forth in Section 2.02(e)(i).
203. "Startup Deadline" means the date as set forth in Section 1.03 by which Seller must have commenced Initial Operation as set forth in Section 2.03, subject to extension as provided in this Agreement.
204. "Startup Period" has the meaning set forth in Section 3.11(a)(i).
205. "Station Use" means electric energy produced by either the Generating Facility that is either:
- a) Used within the Generating Facility to power the lights, motors, control systems and other electrical loads that are necessary for Operation; or
 - b) Consumed within the electric energy distribution system as losses.
206. "Supplemental Lost Output" has the meaning set forth in Section 3.20.
207. "Supplemental Lost Output Report" has the meaning set forth in Section 3.20.
208. "Term" has the meaning used in Section 1.05.
209. "Termination Payment" has the meaning set forth in Section 6.03.
210. "TLF" means a measure of all net electrical losses, as determined by the Transmission Provider, associated with the transmission of electric energy through the electric system from the high voltage side of the Generating Facility's substation bus bar to the interface with the ISO Grid, also known as the transmission loss factor.
211. "TMM(s)" means the tie meter multipliers as determined by the ISO representing the calculation of all electrical losses over the ISO Grid associated with the transmission of electric energy delivered at an ISO Control Area boundary, which values are, as of the Effective Date, posted by the ISO on its website.
- The values used in the Agreement will be those appearing on the ISO website on the third (3rd) Business Day of the calendar month following the month for which such values are being applied.
212. "TOD Period(s)" means the time of delivery period(s) set forth in Exhibit K.

The contents of this document are subject to restrictions on disclosure as set forth herein.

QFID# 6310, Caithness 251 Wind LLC

213. "TOD Period Energy Payment" means the Energy Payment for the relevant TOD Period, as determined pursuant to Section 4.04(b).
214. "Tolling Period" has the meaning set forth in Section 12.03(a)(iv).
215. "Transferring Capacity" has the meaning set forth in Section 2.02(e)(ii).
216. "Transmission Provider" means any entity or entities responsible for the interconnection of the Generating Facility with a Control Area or transmitting the Metered Amounts on behalf of Seller from the Generating Facility to the Delivery Point.
217. "Trigger Date" has the meaning set forth in Section 1.02.
218. "Turbine Cost Expert" means any of Garrad Hassan America, Inc., Global Energy Concepts, LLC, Stone & Webster, Inc. or any other independent third party jointly selected by the Parties and reasonably experienced in the evaluation of Wind Turbine costs.
219. "Turbine Cost Scope Document" has the meaning set forth in Section 2.04(a)(v) and is attached hereto as Exhibit E.
220. "Unincluded Capacity" has the meaning set forth in Section 3.04(d).
221. "Uninstructed Imbalance Energy" has the meaning set forth in Appendix A of the ISO Tariff.
222. "VGIV" means Victory Garden Phase IV Partnership, a California general partnership, and successor in interest to Zond Systems Holding Company with respect to certain power purchase contracts.
223. "WECC" means the Western Electricity Coordinating Council, the regional reliability council for the Western United States, Northwestern Mexico and Southwestern Canada.
224. "Wind Turbine" or "Wind Turbines" means the wind turbine generators installed on the Site as part of the Generating Facility including any replacements or substitutes therefore.
225. "Wind Turbine Commissioning Report" means the report on the installation, test procedures, results and other relevant installation information provided by the Wind Turbine manufacturer upon the completion of the installation of the Wind Turbines.
226. "ZWHC" means ZWHC LLC, a Delaware limited liability company, successor to Zond Windsystems Holding Company, a California corporation.

The contents of this document are subject to restrictions on disclosure as set forth herein.

**** End of EXHIBIT A ****

The contents of this document are subject to restrictions on disclosure as set forth herein.

EXHIBIT B

Generating Facility Description

The contents of this document are subject to restrictions on disclosure as set forth herein.

EXHIBIT B

Generating Facility Description.¹

1. Site Plan.
2. Legal Description.
3. Metering Plan.

**** End of EXHIBIT B ****

¹ Seller shall provide description of the Generating Facility equipment, systems and features, including a Site Plan, Legal Description and a Metering Plan within 60 days of the Trigger Date.

The contents of this document are subject to restrictions on disclosure as set forth herein.

EXHIBIT B-1

Provisional ISO4 Transition Plan

The contents of this document are subject to restrictions on disclosure as set forth herein.

QFID# 6310, Caithness 251 Wind LLC

EXHIBIT B-1

Provisional ISO4 Transition Plan

Current sellers and capacity allocations under the 251 PPAs (the number of Wind Turbines for each seller indicated in parentheses) as of the Effective Date, before any repowering pursuant to this Agreement, are as follows:

	<u>QFID</u> <u>6105</u> <u>(Monolith</u> <u>X PPA)</u>	<u>QFID</u> <u>6106</u> <u>(Monolith</u> <u>XI PPA)</u>	<u>QFID</u> <u>6107</u> <u>(Monolith</u> <u>XII PPA)</u>	<u>QFID</u> <u>6108</u> <u>(Monolith</u> <u>XIII PPA)</u>	<u>Total</u>
PPA kW Capacity	5,310	4,990	6,720	5,670	22,690
Caithness 251 kW Allocation	3,270 (33)	3,730 (42)	5,595 (63)	5,670 (62)	18,265 (200)
H&S kW Allocation²	2,040 (7)	1,260 (14)			3,300 (21)
VGIV kW Allocation³			1,125 (5)		1,125 (5)
Total	5,310	4,990	6,720	5,670	22,690 (226)

Seller's provisional plan for reallocating the electrical generating capacity as between the 251 PPAs and this Agreement is set forth below. Pursuant to Section 2.02(e) of the Agreement, the Parties shall attempt in good faith to agree upon a Final ISO4 Transition Plan.

² H&S has rights to sell power under the Monolith X PPA QFID 6105 (dated as of April 16, 1985, between SCE and Zond Systems, Inc.) pursuant to Amendment No. 1 to the Power Purchase Contract, dated as of February 22, 1989, by and among SCE, Zond Systems, Inc. and H&S and under the Monolith XI PPA QFID 6106 (dated as of April 16, 1985, between SCE and Zond Systems, Inc.) pursuant to Amendment No. 1 to the Power Purchase Contract, dated as of February 22, 1989, by and among SCE, Zond Systems, Inc. and H&S.

³ VGIV, a subsidiary of FPL, has rights to sell power under the Monolith XII PPA QFID 6107 (dated as of April 16, 1985, between SCE and Zond Systems, Inc.) pursuant to Amendment No. 1 to the Power Purchase Contract, dated as of February 22, 1989, by and among SCE, Zond Systems, Inc. and VGIV.

The contents of this document are subject to restrictions on disclosure as set forth herein.

QFID# 6310, Caithness 251 Wind LLC

	<u>OFID 6105 (Monolith X PPA)</u>	<u>OFID 6106 (Monolith XI PPA)</u>	<u>OFID 6107 (Monolith XII PPA)</u>	<u>OFID 6108 (Monolith XIII PPA)</u>	<u>Total</u>
PPA kW Capacity	2,040	1,260	1,125	NA	4,425
H&S kW Allocation	2,040 (7)	1,260 (14)			3,300 (21)
VGIV kW Allocation			1,125 (5)		1,125 (5)
Total	2,040	1,260	1,125	NA	4,425 (26)

Caithness 251 Wind LLC will sell electrical energy under this Agreement as shown on the table below:

	<u>PPSA#1</u>	<u>PPSA#2</u>
Caithness 251 kW Capacity	18,265	15,800
Existing turbines kW Allocation	3,265 (36)	800 (9)
New turbines kW Allocation	15,000 (5)	15,000 (5)

*** End of EXHIBIT B-1 ***

The contents of this document are subject to restrictions on disclosure as set forth herein.

EXHIBIT C

Notice List

The contents of this document are subject to restrictions on disclosure as set forth herein.

EXHIBIT C

Notice List

<p>("Seller")</p>	<p>SOUTHERN CALIFORNIA EDISON COMPANY ("SCE")</p>
<p>All Notices are deemed provided in accordance with Section 10.08 if made to the address and/or facsimile numbers provided below:</p>	<p>All Notices are deemed provided in accordance with Section 10.08 if made to the address and/or facsimile numbers provided below:</p>
<p>Contract Sponsor: Attn: Ken Hoffman Street: 565 5th Avenue, 29th Floor City: New York, New York 10017 Phone: (212) 921-9099 Facsimile: (212) 921-9239</p>	<p>Contract Sponsor: Attn: Director, Renewable and Alternative Power Street: 2244 Walnut Grove Ave, City: Rosemead, California Zip: 91770 Phone: (626) 302- Facsimile: (626) 302-</p>
<p>Reference Numbers: Duns: [REDACTED] Federal Tax ID Number: [REDACTED]</p>	<p>Reference Numbers: Duns: [REDACTED] Federal Tax ID Number: [REDACTED]</p>
<p>Contract Administration: Attn: Ken Hoffman Phone: (212) 921-9099 Facsimile: (212) 921-9239</p>	<p>Contract Administration: Attn: Phone: (626) 302- Facsimile: (626) 302-1102</p>
<p>Scheduling: Attn: Control Room Phone: (661) 822-7524 Facsimile: (661) 822-8394</p>	<p>Generation Operations Center: Phone: (626) 302-3285 or Phone: (626) 302-3205</p>

The contents of this document are subject to restrictions on disclosure as set forth herein.

QFID# 6310, Caithness 251 Wind LLC

<p>("Seller")</p>	<p>SOUTHERN CALIFORNIA EDISON COMPANY ("SCE")</p>
<p>Day Ahead Scheduling: Phone: (661) 822-7524 Facsimile: (661) 822-8394</p>	<p>Day Ahead Scheduling: <u>Manager.</u> Attn: Manager of Day-Ahead Operations Phone: (626) 302-3239 Facsimile: (626) 307-4413 <u>Scheduling Desk.</u> Phone: (626) 302-4425 Backup: (626) 307-4420 Fax: (626) 307-4413 Email: PreSched@SCE.com</p>
<p>Real-time Scheduling: Phone: (661) 822-7524 Facsimile: (661) 822-8394</p>	<p>Real-time Scheduling: <u>Manager.</u> Attn: Manager of Real-time Operations Phone: (626) 302-3308 Facsimile: (626) 307-4416 <u>Operations Desk.</u> Phone: (626) 307-4453 Back-up: (626) 307-4410 Fax: (626) 307-4416 Email: RealTime@SCE.com</p>
<p>Outage Scheduling: Phone: (661) 822-7524 Facsimile: (661) 822-8394</p>	<p>Outage Scheduling: Phone: (626) 302-1145 URL:</p>
<p>Payment Statements: Attn: Ken Hoffman Phone: (212) 921-9099 Facsimile: (212) 921-9239</p>	<p>Payment Statements: Attn: Phone: (626) 302- Facsimile: (626) 302-1102 Email: ContractSettlements@SCE.com</p>

The contents of this document are subject to restrictions on disclosure as set forth herein.

Southern California Edison

Confidential Information

QFID# 6310, Caithness 251 Wind LLC

("Seller")	SOUTHERN CALIFORNIA EDISON COMPANY ("SCE")
Payments: Attn: Ken Hoffman Phone: (212) 921-9099 Facsimile: (212) 921-9239	Payments: Attn: Phone: (626) 302- Facsimile: (626) 302-1102 Email: ContractSettlements@SCE.com
Wire Transfer: BNK: JPMorgan Chase ABA: [REDACTED] ACCT: [REDACTED]	Wire Transfer: BNK: JP Morgan Chase Bank ABA: [REDACTED] ACCT: [REDACTED]
Credit and Collections: Attn: Patrick O'Shaughnessy Phone: (212) 921-9099 Facsimile: (212) 921-9239	Manager of Credit and Collateral: Attn: Manager of Credit Phone: (626) 302- Facsimile: (626) 302-
With additional Notices of an Event of Default or Potential Event of Default to: Attn: Phone: Facsimile:	With additional Notices of an Event of Default or Potential Event of Default to: Attn: Manager SCE Law Department Power Procurement Section Phone: (626) 302-3141 Facsimile: (626) 302-1904
Guarantor: Attn: Phone: Facsimile:	Qualifying Facility Efficiency Data: Attn: Renewable and Alternative Power Department QF Efficiency Monitor Phone: (626) 302- Facsimile: (626) 302- Email: QFem@SCE.com

The contents of this document are subject to restrictions on disclosure as set forth herein.

Southern California Edison

Confidential Information

QFID# 6310, Caitlness 251 Wind LLC

("Seller")	SOUTHERN CALIFORNIA EDISON COMPANY ("SCE")
Lender: West LB AG, New York Branch Attn: Jared Brenner Phone: (212) 852-6116 Facsimile: (212) 597-1157 Email: jared_brenner@westlb.com	

*** End of EXHIBIT C ***

The contents of this document are subject to restrictions on disclosure as set forth herein.

EXHIBIT D

Forecasting and Scheduling Requirements and Procedures

The contents of this document are subject to restrictions on disclosure as set forth herein.

EXHIBIT D

Forecasting and Scheduling Requirements and Procedures

1. Introduction.

The Parties shall abide by the Forecasting and Scheduling requirements and procedures described below and shall agree upon reasonable changes to these requirements and procedures from time-to-time, as necessary to:

- (a) Comply with ISO Tariff changes;
- (b) Accommodate changes to their respective generation technology and organizational structure; and
- (c) Address changes in the operating and Scheduling procedures of both SCE and the ISO, including but not limited to, automated forecast and outage submissions.

2. Seller's Availability Forecasting Requirements.

Seller must meet all of the following requirements for Forecasting as specified below.

- (a) No later than thirty (30) days prior to Initial Synchronization, Seller shall provide SCE with a 30-day, hourly forecast of the expected available total generation capacity of the Generating Facility, in MW, ("Availability Forecast"), for the thirty day (30) period commencing on Initial Synchronization, using the Web Client.

If, after submitting the Availability Forecast pursuant to this Section 2(a), Seller learns that Initial Synchronization will occur on an earlier date and time than reflected on the Availability Forecast, Seller will provide an updated Availability Forecast reflecting the new Initial Synchronization date at the earliest practicable time but no later than 5:00 p.m. Pacific Prevailing Time ("PPT") on the Wednesday prior to the new Initial Synchronization date, if Seller has learned of the new Initial Synchronization Date by that time, but in no event not less than three (3) Business Days prior to the new Initial Synchronization date.

In the event the Web Client becomes unavailable, Seller shall provide SCE with the Availability Forecast by telephoning SCE's Generation Operations Center, at the telephone number(s) listed in Exhibit C and providing the information that would have been submitted using Web Client.

The contents of this document are subject to restrictions on disclosure as set forth herein.

QFID# 6310, Caithness 251 Wind LLC

- (b) The Availability Forecast, and any updated Availability Forecasts provided pursuant to this Section 2, shall:
 - (i) Not include any anticipated or expected electric energy losses between the ISO Approved Meter(s) and the Delivery Point; and
 - (ii) Limit hour-to-hour forecast changes to no less than two hundred fifty (250) kW.
- (c) Commencing on or before 5:00 p.m. PPT of the Wednesday prior to the first week covered by the Availability Forecast provided pursuant to Section 2(a) above and on or before 5:00 p.m. PPT every Wednesday thereafter until the end of the Term, Seller shall update the Availability Forecast for the thirty (30) day period commencing on the Sunday following the weekly Wednesday Availability Forecast update submission. Seller shall use the Web Client, if available, to supply this weekly update or, if the Web Client is not available, Seller shall provide SCE with the weekly Availability Forecast update by telephoning SCE's Generation Operations Center, at the telephone number(s) listed in Exhibit C.
- (d) If Seller learns of any change in the available capacity of the Generating Facility for a period covered by the most recent Availability Forecast update resulting from any cause, including, but not limited to, an unplanned outage, prior to the time that the next weekly update of the Availability Forecast is due which results in variance in available capacity in any hour of plus (+) or minus (-) three percent (3%) from the available capacity reported in the most recent Availability Forecast update, Seller shall provide an updated Availability Forecast to SCE. This updated Availability Forecast must be submitted to SCE by no later than:
 - (i) 5:30 am PPT on the day prior to any day impacted by the change, if the change is known to Seller at that time, or
 - (ii) Thirty (30) minutes before the commencement of any hour impacted by the change, if the change is known to Seller at that time, or
 - (iii) If the change is not known to Seller by the timeframes indicated in (i) or (ii) above, no later than twenty (20) minutes after the commencement of the event which caused the availability change.

In the case of (iii), Seller's updated Availability Forecast must contain the following information:

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- (iv) The beginning date and time of the event resulting in the availability change;
- (v) The expected ending date and time of the event;
- (vi) The expected availability, in MW; and
- (vii) Any other information required by the ISO as communicated to Seller by SCE.

3. SCE's Scheduling Responsibilities.

Pursuant to the ISO Tariff, SCE shall be responsible for the following:

- (a) Using the Availability Forecast submitted to SCE pursuant to Section 2 above, including updated Availability Forecasts to the extent reasonably practicable, to forecast Seller's expected generation using SCE's forecasting model ("SCE's Projected Energy Forecast") in any given hour.
- (b) Adjusting SCE's Projected Energy Forecast for forecasted electric energy line losses to reflect Seller's self-provision of those losses and the amount of electric energy Seller is expected to deliver to the Delivery Point.
- (c) Submitting the adjusted forecasts to the ISO as SC Schedules.
- (d) Receiving notification of the Final Hour-Ahead Schedules from the ISO.

4. Seller's Outage Scheduling Requirements.

Seller shall be responsible for all expenses and costs associated with all requirements and timelines for generation outage scheduling contained in the ISO's Scheduled and Forced Outage Procedure T-113 as posted on the ISO's website.

*** End of EXHIBIT D ***

The contents of this document are subject to restrictions on disclosure as set forth herein.

EXHIBIT E

Turbine Cost Scope Document

The contents of this document are subject to restrictions on disclosure as set forth herein.

EXHIBIT E

Turbine Cost Scope Document

Item	\$ Amount
<p><u>Wind Turbine Generators (WTGs) Including Towers and SCADA</u></p> <ul style="list-style-type: none"> • Including WTGs (Everything installed above the tower/nacel coupling, including but not limited to nacel, blades, hub, gearbox, and generator, yaw system, anemometer, etc.) • WTG footings • Control panels • Step-up Transformer • High Voltage switchgear • Protective equipment • Conductor • SCADA System -- Hardware and Software • Computer Station • 2- year standard warranty • 2- year full service and maintenance agreement covering scheduled and unscheduled maintenance (including parts and consumables), 24 hour surveillance with remote resets, documentation subscription and 95% availability guarantee for years 1 and 2 (90% in first 6 months) <p><u>Towers</u></p> <ul style="list-style-type: none"> • 65 meter hub height tubular steel IEC Class I towers (where the maximum tower height (in feet) = $(400 \text{ ft} - \text{rotor diameter (ft)})/2$)⁴ • Internal safety ladders and lights 	
<p><u>Ocean Freight</u></p> <ul style="list-style-type: none"> • WTGs to major west coast or gulf coast ports • Towers to North American port or Ex-works at factory in North America • Shipping insurance 	

⁴ N.B. The U.S. military has mandated a maximum height restriction in the Tehachapi area.

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Item	\$ Amount
<p><u>Land Transportation</u></p> <ul style="list-style-type: none"> • WTGs from port to Tehachapi, California • Towers from North American port or Ex-works at factory in North America to Tehachapi, California • Insurance 	
<p><u>FAA Lighting</u></p> <ul style="list-style-type: none"> • FAA type L864/5 lighting 	
<p><u>Options</u></p> <ul style="list-style-type: none"> • Cold weather package • DVAR compensation 	
<p><u>WTG Technical Advice and Commissioning, including</u></p> <ul style="list-style-type: none"> • Site supervision & technical advice during the erection period • Final assembly, testing and commissioning of WTGs by Seller's technicians 	
<p><u>Payment Terms</u></p> <p>10% of total is to be paid to vendor as a non-refundable down payment upon contract signing. Seller is to establish an irrevocable standby letter of credit at a bank acceptable to vendor for the balance of the contract value at the time the down payment is made.</p> <p>55% of total is to be paid Ex-Works Factory.</p> <p>20% of total is to be paid when the WTG(s) are delivered to the project site(s).</p> <p>15% of total to be paid, upon commissioning on a per WTG basis.</p>	

*** End of EXHIBIT E ***

The contents of this document are subject to restrictions on disclosure as set forth herein.

EXHIBIT F

Seller's Annual Energy Delivery Obligation

The contents of this document are subject to restrictions on disclosure as set forth herein.

EXHIBIT F

Seller's Annual Energy Delivery Obligation

1. Introduction.

This Exhibit F sets forth the calculation of:

- a) Seller's Annual Energy Delivery Obligation in each of Firm Operating Period Year; and
- b) The Energy Replacement Damage Amount that shall be paid by Seller to SCE if there is an Event of Deficient Energy Deliveries in any Firm Operating Period Year.

2. Seller's Annual Energy Delivery Obligation.

Seller's Annual Energy Delivery Obligation for all Firm Operating Period Years shall be calculated in accordance with the following formula:

SELLER'S ANNUAL
ENERGY DELIVERY OBLIGATION, in MWh = A x B

Where:

- A = Firm Operating Period Year Estimate of Metered Amounts, calculated by the Generating Facility Performance Model, in MWh.
- B = Seller's Generating Facility Efficiency Guarantee for the appropriate Firm Operating Period Year, set forth in Section 1.01(e).

provided that, in the event that Seller's obligation to deliver energy pursuant to Section 3.05 (Seller's Annual Energy Delivery Obligation) for a Firm Operating Period Year begins after the commencement of such Firm Operating Period Year or ends prior to the termination of such Firm Operating Period Year, then Seller's Annual Energy Delivery Obligation for such Firm Operating Period Year shall be equal to (x) Seller's Annual Delivery Obligation as calculated above in this Item 2 multiplied by (y) a fraction equal to the number of whole months of such Firm Operation Period Year during which Seller is obligated to deliver energy pursuant to Section 3.05 divided by 12.

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3. Deficient Energy Delivery Amount.

The Deficient Energy Delivery Amount for all Firm Operating Period Years shall be calculated in accordance with the following formula:

DEFICIENT ENERGY DELIVERY AMOUNT, in MWh

$$= A - B$$

Where:

A = Seller's Annual Energy Delivery Obligation, calculated as set forth in Item 2 of this Exhibit F, in MWh.

B = Sum of Metered Amounts during all Settlement Intervals, which are not Lost Output Settlement Intervals, for the applicable Firm Operating Period Year, in MWh.

An Event of Deficient Energy Deliveries shall be deemed to have occurred if the Deficient Energy Delivery Amount, calculated as set forth in this Item 3 of Exhibit F in MWh, is greater than zero (0).

4. Energy Replacement Damage Amount.

If an Event of Deficient Energy Deliveries occurs, Seller shall pay to SCE as liquidated damages an Energy Replacement Damage Amount which shall be the lesser of the:

- a) Energy Replacement Damage Amount Calculation Result, calculated as set forth in Item 5 of this Exhibit F, in dollars; and
- b) Energy Replacement Damage Amount Maximum, calculated as set forth in Item 6 of this Exhibit F, in dollars.

5. Energy Replacement Damage Amount Calculation Result.

Seller's Energy Replacement Damage Amount Calculation Result shall be calculated according to the following formula:

ENERGY REPLACEMENT DAMAGE AMOUNT CALCULATION RESULT, in dollars

$$= A \times (B - C)$$

Where:

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- A = Deficient Energy Delivery Amount, calculated as set forth in Item 3 of this Exhibit F, in MWh.
- B = Simple average of the Market Prices for all Settlement Intervals during the Firm Operating Period Year, in dollars per MWh;
- C = Energy Price, dollars per MWh

provided that, the result of “(B – C)” shall not be:

- (i) Less than twenty dollars (\$20) per MWh; nor
- (ii) Greater than fifty dollars (\$50) per MWh.

6. Energy Replacement Damage Amount Maximum.

Seller’s Energy Replacement Damage Amount Maximum shall be calculated according to the following formula:

ENERGY REPLACEMENT DAMAGE AMOUNT MAXIMUM, in dollars

$$= A \times B \times C$$

Where:

- A = Energy Price, as set forth in Section 1.06, in dollars per MWh.
- B = The sum of all Metered Amounts for the applicable Firm Operating Period Year, in MWh;
- C = Fifty percent (50%).

*** End of EXHIBIT F***

The contents of this document are subject to restrictions on disclosure as set forth herein.

EXHIBIT G

Seller's Milestone Schedule

The contents of this document are subject to restrictions on disclosure as set forth herein.

EXHIBIT G⁵
Seller's Milestone Schedule

<i>No.</i>	<i>Date</i>	<i>Milestones</i>
1	December 2005	Files demolition, grading, and site plan permits
2	Not Applicable	Files any land applications.
3	January 2006	Receives demolition permit
4	January 2006	Submits interconnection application.
5	April 2006	Receives site approval permit
6	September 2006	Receives grading and site plan permit
7	Trigger Date + 1 month	Files an Authority to Construct permit application.
8	Trigger Date + 2 month	Files a CEC Certification and Verification application.
9	TBD	Receives a completed System Impact Study.
10	Not Applicable	[Obtains control of all lands and rights-of-way comprising the Site.]
11	TBD	Receives a completed interconnection Facility Study.
12	TBD	Executes a Transmission Owner Tariff and / or applicable service agreement.
13	TBD	Receives FERC acceptance of Interconnection Agreement and transmission agreement(s).
14	Not Applicable	[Receives a Conditional Use Permit.]
15	Trigger Date + 4 months	Receives an Authority to Construct permit.
16	TBD	Receives CEC Certification and Verification.
17	Trigger Date + 9 months	Executes an Engineering, Procurement and Construction ("EPC") contract.
18	Trigger Date + 4 months	Receives a construction permit.
19	Trigger Date + 17 months	Completes Financing.
20	Trigger Date + 18 months	Begins construction of the Generating Facility.

⁵ To be revised in accordance with this Agreement.

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21	Trigger Date + 22 months	Begins startup activities.
22	Trigger Date + 23 months	Achieves Initial Operation.
23	Trigger Date + 24 months	Demonstrates the Nameplate Contract Capacity.

*** End of EXHIBIT G ***

The contents of this document are subject to restrictions on disclosure as set forth herein.

EXHIBIT H

Milestone Progress Reporting Form

The contents of this document are subject to restrictions on disclosure as set forth herein.

EXHIBIT H*Milestone Progress Reporting Form*

Seller shall prepare a written report each month on its progress relative to the development construction and startup of the Generating Facility and the Milestone Schedule. The report shall be sent via email in the form of a single Adobe Acrobat file or facsimile to SCE's Contract Administrator, as noted in Exhibit C, on the fifth (5th) Business Day of each month.

Seller's Milestone Progress Reporting requirement shall begin on the first day of the second full calendar month after the Effective Date of this Agreement and shall end upon the commencement of the Firm Operating Period Start Date.

Each Milestone Progress Report shall include the following items:

1. Cover page.
2. Brief Generating Facility description.
3. Site plan of the Generation Facility.
4. Description of any planned changes to the Generating Facility and Site Description in Exhibit B.
5. Bar chart schedule showing progress on achieving the Milestone Schedule.
6. PERT or GANT chart showing critical path schedule of major items and activities.
7. Summary of activities during the previous month.
8. Forecast of activities scheduled for the current month.
9. Written description about the progress relative to Seller's Milestone Schedule.
10. List of issues that could potentially impact Seller's Milestone Schedule.
11. Enumeration and schedule of any support or actions requested of SCE.
12. Progress and schedule of all agreements, contracts, Permits, approvals, technical studies, financing agreements and major equipment purchase orders showing the start dates, completion dates, and completion percentages.
13. A status report of start-up activities including a forecast of activities ongoing and after start-up, a report on Generating Facility performance including performance projections for the next twelve (12) months.

*** End of EXHIBIT H ***

The contents of this document are subject to restrictions on disclosure as set forth herein.

EXHIBIT I

Form of Guaranty Agreement

The contents of this document are subject to restrictions on disclosure as set forth herein.

EXHIBIT I

Form of Guaranty Agreement

1. Guaranty.

For valuable consideration, [Guarantor's legal name], [legal status] ("Guarantor") unconditionally and irrevocably guarantees payment to Southern California Edison Company, a California corporation, and its successors and assigns (collectively, "Beneficiary"), of all amounts owed to Beneficiary by [Seller's legal name], [legal status] ("Principal") under that certain Renewable Power Purchase and Sale Agreement between Beneficiary and Principal dated [date], as amended from time to time ("Agreement") (said amounts are hereinafter referred to as the "Obligations"). Initially capitalized words that are used but not otherwise defined herein shall have the meanings given them in the Agreement. Upon the failure or refusal by Principal to pay all or any portion of the Obligations, the Beneficiary may make a demand upon the Guarantor. Such demand shall be in writing and shall state the amount Principal has failed to pay and an explanation of why such payment is due, with a specific statement that Beneficiary is calling upon Guarantor to pay under this guaranty ("Guaranty"). Guarantor shall promptly, but in no event less than ten Business Days following demand by Beneficiary, pay such Obligations in immediately available funds. A payment demand satisfying the foregoing requirements shall be deemed sufficient notice to Guarantor that it must pay the Obligations. Other than such demand for payment, the Guarantor hereby expressly waives all notices between the Beneficiary and the Principal including without limitation all notices with respect to the Agreement and this Guaranty, and any notice of credits extended and sales made by the Beneficiary to the Principal, and all other notices whatsoever. The liability of Guarantor hereunder is a continuing guaranty of payment when any amount is owing without regard to whether recovery may be or has become barred by any statute of limitations or otherwise may be unenforceable.

2. Guaranty Limit.

Subject to Paragraph 12, the liability of Guarantor hereunder shall not exceed \$_____ in the aggregate, which amount shall include all interest that has accrued on any amount owed hereunder.

3. Guaranty Absolute.

Guarantor agrees that its obligations under this Guaranty are irrevocable, absolute, independent and unconditional and shall not be affected by any circumstance which constitutes a legal or equitable discharge of a guarantor or surety. In furtherance of the foregoing and without limiting the generality thereof, Guarantor agrees as follows:

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- (a) The liability of Guarantor under this Guaranty is a guaranty of payment and not of collectibility, and is not conditional or contingent upon the genuineness, validity, regularity or enforceability of the Agreement or the pursuit by Beneficiary of any remedies which it now has or may hereafter have under the Agreement;
- (b) Beneficiary may enforce this Guaranty upon the occurrence of a default by Principal under the Agreement notwithstanding the existence of a dispute between Beneficiary and Principal with respect to the existence of the default;
- (c) The obligations of Guarantor under this Guaranty are independent of the obligations of Principal under the Agreement and a separate action or actions may be brought and prosecuted against Guarantor whether or not any action is brought against Principal or any other guarantors and whether or not Principal is joined in any such action or actions;
- (d) Guarantor's payment of a portion, but not all, of the Obligations shall in no way limit, affect, modify or abridge Guarantor's liability for that portion of the Obligations which is not paid. Without in any way limiting the generality of the foregoing, if Beneficiary is awarded a judgment in any suit brought to enforce a portion of the Obligations, such judgment shall not be deemed to release Guarantor from its covenant to pay that portion of the Obligations which is not the subject of such suit;
- (e) Beneficiary may, at its election, foreclose on any security held by Beneficiary, whether or not the means of foreclosure is commercially reasonable, or exercise any other right or remedy available to Beneficiary without affecting or impairing in any way the liability of Guarantor under this agreement, except to the extent the amount(s) owed to Beneficiary by Principal have been paid; and
- (f) Guarantor shall continue to be liable under this Guaranty and the provisions hereof shall remain in full force and effect notwithstanding:
 - (i) any modification, amendment, supplement, extension, agreement or stipulation between Principal and Beneficiary or their respective successors and assigns, with respect to the Agreement or the obligations encompassed thereby;
 - (ii) Beneficiary's waiver of or failure to enforce any of the terms, covenants or conditions contained in the Agreement;
 - (iii) any release of Principal or any other guarantor from any liability with respect to the Obligations or any portion thereof;

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- (iv) any release, compromise or subordination of any real or personal property then held by Beneficiary as security for the performance of the Obligations or any portion thereof, or any substitution with respect thereto;
- (v) Beneficiary's acceptance and/or enforcement of, or failure to enforce, any other guaranties;
- (vi) Beneficiary's exercise of any other rights available to it under the Agreement;
- (vii) Beneficiary's consent to the change, reorganization or termination of the corporate structure or existence of the Principal and to any corresponding restructuring of the Obligations;
- (viii) any failure to perfect or continue perfection of a security interest in any collateral that secures the Obligations;
- (ix) any defenses, setoffs or counterclaims that Principal may allege or assert against Beneficiary with respect to the Obligations, including, without limitation, failure of consideration, breach of warranty, statute of frauds, statute of limitations and accord and satisfaction; and
- (x) any other act or thing or omission, or delay to do any other act or thing that might in any manner or to any extent vary the risk of Guarantor as an obligor with respect to the Obligations.

4. Termination; Reinstatement.

- (a) The term of this Guaranty is continuous until the earlier of: (i) the date on which the Obligations have been performed or paid in full or (ii) with regard to future transactions, the date on which Guarantor provides Beneficiary with written notice of such termination, and any such termination shall become effective no earlier than sixty (60) calendar days from the date Beneficiary receives such written notice from Guarantor. Unless otherwise agreed in writing by Beneficiary, no such notice or termination shall release Guarantor from any liability as to any amount or performance that is at the time owing under the Agreement.
- (b) Notwithstanding the provisions of Paragraph 4(a) hereof, this Guaranty shall be reinstated if at any time following the termination of this Guaranty under Paragraph 4(a) hereof, any payment by Guarantor under this Guaranty or pursuant hereto is rescinded or must otherwise be returned by the Beneficiary or other person upon the insolvency, bankruptcy, reorganization, dissolution

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or liquidation of Principal, Guarantor or otherwise, and is so rescinded or returned to the party or parties making such payment, all as though such payment had not been made. Such period of reinstatement shall continue until satisfaction of the conditions contained in, and shall continue to be subject to, the provisions of Paragraphs 4(a) hereof. If all or any portion of the Obligations are paid by Principal, the obligations of Guarantor hereunder shall continue and remain in full force and effect or be reinstated, as the case may be, in the event that all or any part of such payment(s) are rescinded or recovered directly or indirectly from Beneficiary as a preference, fraudulent transfer or otherwise, and any such payments which are so rescinded or recovered shall constitute Obligations for all purposes under this Guaranty.

5. Bankruptcy, Post-Petition Interest.

- (a) So long as any Obligations remain outstanding, Guarantor shall not, without the prior written consent of Beneficiary, commence or join with any other person in commencing any bankruptcy, reorganization or insolvency proceedings of or against Principal. The obligations of Guarantor under this Guaranty shall not be reduced, limited, impaired, discharged, deferred, suspended or terminated by any proceeding, voluntary or involuntary, involving the bankruptcy, insolvency, receivership, reorganization, liquidation or arrangement of the Principal or by any defense which Principal may have by reason of the order, decree or decision of any court or administrative body resulting from any such proceeding.
- (b) Guarantor acknowledges and agrees that any interest on any portion of the Obligations which accrues after the commencement of any proceeding referred to in clause (a) above (or, if interest on any portion of the Obligations ceases to accrue by operation of law by reason of the commencement of said proceeding, such interest as would have accrued on such portion of the Obligations if said proceedings had not been commenced) shall be included in the Obligations because it is the intention of Guarantor and Beneficiary that the Obligations which are guaranteed by Guarantor pursuant to this Guaranty should be determined without regard to any rule of law or order which may relieve Principal of any portion of such Obligations. Guarantor will permit any trustee in bankruptcy, receiver, debtor in possession, assignee for the benefit of creditors or similar person to pay Beneficiary, or allow the claim of Beneficiary in respect of, any such interest accruing after the date on which such proceeding is commenced.
- (c) In any bankruptcy, reorganization, insolvency or other proceeding in which the filing of claims is required by law, Guarantor shall file all claims which Guarantor may have against Principal relating to any indebtedness of Principal to Guarantor and shall assign to Beneficiary all rights of Guarantor

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thereunder. If Guarantor does not file any such claim, Beneficiary, as attorney-in-fact for Guarantor, is hereby authorized to do so in the name of Guarantor or, in Beneficiary's discretion, to assign the claim to a nominee and to cause proof of claim to be filed in the name of Beneficiary's nominee. The foregoing power of attorney is coupled with an interest and cannot be revoked. Beneficiary or its nominee shall have the right, in its reasonable discretion, to accept or reject any plan proposed in such proceeding and to take any other action which a party filing a claim is entitled to do. In all such cases, whether in administration, bankruptcy or otherwise, the person or persons authorized to pay such claim shall pay to Beneficiary the amount payable on such claim and, to the full extent necessary for that purpose. Guarantor hereby assigns to Beneficiary all of Guarantor's rights to any such payments or distributions; provided, however, Guarantor's obligations hereunder shall not be satisfied except to the extent that Beneficiary receives cash by reason of any such payment or distribution. If Beneficiary receives anything hereunder other than cash, the same shall be held as collateral for amounts due under this Guaranty.

6. Subrogation.

In accordance with Paragraph 8(d) hereof, the Guarantor shall be subrogated to all rights of the Beneficiary against Principal in respect of any amounts paid by the Guarantor pursuant to the Guaranty, provided that the Guarantor postpones any rights that it may acquire by way of subrogation under this Guaranty, by any payment made hereunder or otherwise, reimbursement, exoneration, contribution, indemnification or any right to participate in any claim or remedy of the Beneficiary against Principal or any collateral that the Beneficiary now has or hereafter acquires, until all of the Obligations shall have been irrevocably paid to the Beneficiary in full.

If any amount shall be paid to Guarantor on account of such subrogation, reimbursement, contribution or indemnity rights at any time when all the Obligations guaranteed hereunder shall not have been indefeasibly paid in full, Guarantor shall hold such amount in trust for the benefit of Beneficiary and shall promptly pay such amount to Beneficiary.

Guarantor further agrees that to the extent the waiver of its rights of subrogation as set forth herein is found by a court of competent jurisdiction to be void or voidable for any reason, any rights of subrogation Guarantor may have against Principal or against such collateral or security shall be junior and subordinate to any rights Beneficiary may have against Principal and to all right, title and interest Beneficiary may have in such collateral or security. Beneficiary may use, sell or dispose of any item of collateral or security as it sees fit without regard to any subrogation rights that Guarantor may have, and upon any disposition or sale, any rights of subrogation Guarantor may have shall terminate. Guarantor understands that it may record a

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Request for Notice of Default pursuant to California Civil Code Section 2924b and thereby receive notice of any proposed foreclosure of any real property collateral then securing Principal's obligations under the Agreement. With respect to the foreclosure of any security interest in any personal property collateral then securing the Obligations, Beneficiary agrees to give Guarantor five (5) days' prior written notice, in the manner set forth in Paragraph 17 hereof, of any sale or disposition of any such personal property collateral, other than collateral which is perishable, threatens to decline speedily in value, is of a type customarily sold on a recognized market, or is cash, cash equivalents, certificates of deposit or the like. Guarantor's sole right with respect to any such foreclosure of real or personal property collateral shall be to bid at such sale in accordance with applicable law. Guarantor acknowledges and agrees that Beneficiary may also bid at any such sale and if such collateral is sold to Beneficiary in whole or partial satisfaction of Principal's obligations under the Agreement, including the Obligations (or any portion thereof), Guarantor shall not have any further right or interest with respect thereto. The rights of Beneficiary under this Paragraph 6 are in addition to other rights and remedies which Beneficiary may have.

7. Subordination.

Any indebtedness of Principal now or hereafter held by Guarantor is hereby subordinated in right of payment to the Obligations. Guarantor assigns all such indebtedness to Beneficiary as security for this Guaranty and the Agreement. Guarantor agrees to make no claim for such indebtedness until all obligations of Principal under the Agreement have been fully discharged. Guarantor further agrees not to assign all or any part of such indebtedness unless Beneficiary is given prior notice and such assignment is expressly made subject to the terms of this Guaranty. If Beneficiary so requests, (i) all instruments evidencing such indebtedness shall be duly endorsed and delivered to Beneficiary, (ii) all security for such indebtedness shall be duly assigned and delivered to Beneficiary, (iii) such indebtedness shall be enforced, collected and held by Guarantor as trustee for Beneficiary and shall be paid over to Beneficiary on account of the Obligations but without reducing or affecting in any manner the liability of Guarantor under the other provisions of this Guaranty, and (iv) Guarantor shall execute, file and record such documents and instruments and take such other actions as Beneficiary deems necessary or appropriate to perfect, preserve and enforce Beneficiary's rights in and to such indebtedness and any security therefor. If Guarantor fails to take any such action, Beneficiary, as attorney-in-fact for Guarantor, is hereby authorized to do so in the name of Guarantor. The foregoing power of attorney is coupled with an interest and cannot be revoked.

8. Waivers of Guarantor.

- (a) [Intentionally Omitted.]
- (b) Guarantor waives any right to require Beneficiary to:

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- (i) Proceed against Principal;
 - (ii) Proceed against or exhaust any security held from Principal or any other party acting under a separate agreement; or
 - (iii) Pursue any other remedy available to Beneficiary.
- (c) Guarantor waives all of the rights and defenses described in subdivision (a) of Section 2856 of the California Civil Code. As used below in this Subparagraph (c), "debtor" and "principal" each refers to Principal, "creditor" refers to Beneficiary, "guarantor" refers to "Guarantor" and "debt" refers to the Obligations. Without limiting the generality of the waiver in the first sentence of this Subparagraph (c), Guarantor desires and intends to, and hereby does, waive each and all of the rights and defenses described below in this Subparagraph (c).
- (i) The guarantor waives the guarantor's rights of subrogation, reimbursement, indemnification, and contribution and any other rights and defenses that are or may become available to the guarantor by reason of Sections 2787 to 2855, inclusive, of the California Civil Code;
 - (ii) The guarantor waives all rights and defenses that the guarantor may have because the debtor's debt is secured by real property. This means, among other things:
 - a. The creditor may collect from the guarantor without first foreclosing on any real or personal property collateral pledged by the debtor.
 - b. If the creditor forecloses on any real property collateral pledged by the debtor:
 - (1) The amount of the debt may be reduced only by the price for which that collateral is sold at the foreclosure sale, even if the collateral is worth more than the sale price.
 - (2) The creditor may collect from the guarantor even if the creditor, by foreclosing on the real property collateral, has destroyed any right the guarantor may have to collect from the debtor.

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This is an unconditional and irrevocable waiver of any rights and defenses the guarantor may have because the debtor's debt is secured by real property. These rights and defenses include, but are not limited to, any rights or defenses based upon Section 580a, 580b, 580d, or 726 of the California Code of Civil Procedure.

- (iii) The guarantor waives all rights and defenses arising out of an election of remedies by the creditor, even though that election of remedies, such as a nonjudicial foreclosure with respect to security for a guaranteed obligation, has destroyed the guarantor's rights of subrogation and reimbursement against the principal by the operation of Section 580d of the Code of Civil Procedure or otherwise.
- (e) Guarantor assumes all responsibility for keeping itself informed of Principal's financial condition and all other factors affecting the risks and liability assumed by Guarantor hereunder, and Beneficiary shall have no duty to advise Guarantor of information known to it regarding such risks.
- (f) Guarantor waives any defense arising by reason of the incapacity, lack of authority or any disability or other defense of the Principal, including, without limitation, any defense based on or arising out of the lack of validity or enforceability of the Obligations or by reason of the cessation of liability of the Principal under the Agreement for any reason;
- (g) Guarantor waives any defense based upon any statute or rule of law that provides that the obligation of a surety must be neither larger in amount nor in other respects more burdensome than that of the principal;
- (h) Guarantor waives any defense based upon Beneficiary's errors or omissions in the administration of the Obligations;
- (i) Guarantor waives its right to raise any principles of law, statutory or otherwise, that are or might be in conflict with the terms of this Guaranty and any legal or equitable discharge of Guarantor's obligations hereunder;
- (j) Guarantor waives any rights to setoffs, recoupments or counterclaims against Beneficiary;
- (k) Guarantor waives its right to raise any defenses based upon promptness, diligence, and any requirement that Beneficiary protect, secure, perfect or insure any security interest or lien or any property subject thereto;

The contents of this document are subject to restrictions on disclosure as set forth herein.

QFID# 6310, Caithness 251 Wind LLC

- (l) Guarantor waives any defenses or benefits that may be derived from or afforded by law which limit the liability of or exonerate guarantors or sureties, or which may conflict with the terms of this Guaranty;
 - (m) Guarantor waives any rights or defenses that Guarantor may have under Sections 2899 and 3433 of the California Civil Code;
 - (n) Guarantor waives any defense based upon Beneficiary's election, in any proceeding instituted under the United States Bankruptcy Code, as amended, of the application of Section 1111(b)(2) of the United States Bankruptcy Code, as amended, or any successor statute; and
 - (o) Guarantor waives any defense based upon any borrowing or any grant of a security interest under Section 364 of the United States Bankruptcy Code, as amended.
9. No Waiver of Rights by Beneficiary.
- No right or power of Beneficiary under this Guaranty shall be deemed to have been waived by any act or conduct on the part of Beneficiary, or by any neglect to exercise a right or power, or by any delay in doing so, and every right or power of Beneficiary hereunder shall continue in full force and effect until specifically waived or released in a written document executed by Beneficiary.
10. Assignment, Successors and Assigns.
- This Guaranty shall be binding upon Guarantor, its successors and assigns, and shall inure to the benefit of, and be enforceable by, the Beneficiary, its successors, assigns and creditors, and can be modified only by a written instrument signed by the Beneficiary and the Guarantor. The Beneficiary shall have the right to assign this Guaranty to any person or entity without the prior consent of the Guarantor; *provided, however,* that no such assignment shall be binding upon the Guarantor until it receives written notice of such assignment from the Beneficiary. The Guarantor shall have no right to assign this Guaranty or its obligations hereunder without the prior written consent of the Beneficiary, which shall not be unreasonably withheld. Any reasonable uncertainty on the part of the Beneficiary concerning the ability on the part of any potential assignee of the Guarantor to carry out the Guarantor's obligations hereunder shall be considered a reasonable basis for withholding consent, unless and until the potential assignee can satisfy the Beneficiary, in its sole discretion, that the assignee is capable of performing the obligations of the Guarantor hereunder.
11. Representations of Guarantor.

The contents of this document are subject to restrictions on disclosure as set forth herein.

QFID# 6310, Caithness 251 Wind LLC

Guarantor hereby represents and warrants that:

- (a) It is a corporation duly organized, validly existing and in good standing in all necessary jurisdictions and has full power and authority to execute, deliver and perform this Guaranty;
- (b) It has taken all necessary actions to execute, deliver and perform this Guaranty;
- (c) This Guaranty constitutes the legal, valid and binding obligation of Guarantor, enforceable in accordance with its terms, subject to bankruptcy, insolvency, reorganization, moratorium and other similar laws effecting creditors' rights generally and to general equitable principles;
- (d) Execution, delivery and performance by Guarantor of this Guaranty does not conflict with, violate or create a default under any of its governing documents, any agreement or instruments to which it is a party or to which any of its assets is subject or any applicable law, rule, regulation, order or judgment of any Governmental Authority; and
- (e) All consents, approvals and authorizations of governmental authorities required in connection with Guarantor's execution, delivery and performance of this Guaranty have been duly and validly obtained and remain in full force and effect.

12. Attorneys' Fees.

In addition to the amounts for which payment is guaranteed hereunder, Guarantor agrees to pay reasonable attorneys' fees and all other costs and expenses incurred by Beneficiary in enforcing this Guaranty or in any action or proceeding arising out of or relating to this Guaranty. Any costs for which Guarantor becomes liable pursuant to this Paragraph 12 shall not be subject to, and shall not count toward, the guaranty limit set forth in Paragraph 2 above.

13. Governing Law.

This Guaranty is made under and shall be governed in all respects by the laws of the State of California, without regard to conflict of law principles, and its provisions may not be waived, altered, modified or amended except in writing executed by an officer of each of Guarantor and Beneficiary. If any provision of this Guaranty is held invalid under the laws of California, this Guaranty shall be construed as though the invalid provision has been deleted, and the rights and obligations of the parties shall be construed accordingly.

The contents of this document are subject to restrictions on disclosure as set forth herein.

QFID# 6310, Caithness 251 Wind LLC

14. Construction.

All parties to this Guaranty are represented by legal counsel. The terms of this Guaranty and the language used in this Guaranty shall be deemed to be the terms and language chosen by the parties hereto to express their mutual intent. This Guaranty shall be construed without regard to any presumption or rule requiring construction against the party causing such instrument or any portion thereof to be drafted, or in favor of the party receiving a particular benefit under this Guaranty. No rule of strict construction will be applied against any person.

15. Amendment; Severability.

Neither this Guaranty nor any of the terms hereof may be terminated, amended, supplemented or modified, except by an instrument in writing executed by an authorized representative of each of Guarantor and Beneficiary. If any provision in or obligation under this Guaranty shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

16. Third Party Rights.

This Guaranty shall not be construed to create any rights in any person other than Guarantor and Beneficiary and their respective successors and permitted assigns.

17. Notices.

Any notice given hereunder by either Guarantor or Beneficiary shall be made by facsimile to the person and at the address for notices specified below (with notices to Guarantor sent to facsimile and address specific below for Beneficiary).

Beneficiary.

Southern California Edison Company
2244 Walnut Grove Avenue, Quad 4-D
Rosemead, CA 91770
Attn: Director, Renewable and Alternative Power
Phone: (626) 302-
Facsimile: (626) 302-

with a copy to:

Southern California Edison Company

The contents of this document are subject to restrictions on disclosure as set forth herein.

QFID# 6310, Caithness 251 Wind LLC

2244 Walnut Grove Avenue, Quad 4-D
Rosemead, CA 91770
Attn: Director, Risk Control
Phone: (626) 302-
Facsimile: (626) 302-

Guarantor.

[Guarantor]
[Street]
[City, State Zip]
Attn:
Phone:
Facsimile:

Principal.

[Principal]
[Street]
[City, State Zip]
Attn:
Phone:
Facsimile:

Such notice shall be effective upon actual receipt if received during the recipient's normal business hours, or at the beginning of the recipient's next Business Day after receipt if receipt is outside of the recipient's normal business hours. Either party may periodically change any address to which notice is to be given it by providing notice of such change as provided herein.

Guarantor.

_____ *[legal name]*
By: _____
Title: _____
Date: _____

Beneficiary.

Agreed to by Beneficiary for purposes of establishing the creditworthiness of

The contents of this document are subject to restrictions on disclosure as set forth herein.

QFID# 6310, Caithness 251 Wind LLC

Principal, as partial security for the Agreement.

SOUTHERN CALIFORNIA EDISON COMPANY

By: _____

Title: _____

Date: _____

***** End of EXHIBIT I *****

The contents of this document are subject to restrictions on disclosure as set forth herein.

EXHIBIT J

Non-Disclosure Agreement

The contents of this document are subject to restrictions on disclosure as set forth herein.

EXHIBIT J
Non-Disclosure Agreement

The contents of this document are subject to restrictions on disclosure as set forth herein.

Southern California Edison

NON-DISCLOSURE AGREEMENT

Between

SOUTHERN CALIFORNIA EDISON COMPANY

and

CAITHNESS 251 WIND REPOWER, LLC

SOUTHERN CALIFORNIA EDISON COMPANY ("SCE"), a California corporation, and CAITHNESS 251 WIND REPOWER, LLC ("251 Repower"), a Delaware limited liability company, hereby enter into this Non-Disclosure Agreement ("Agreement").

SCE and 251 Repower shall sometimes be referred to in this Agreement individually as a "Party" and jointly as the "Parties."

RECITALS

- A. SCE initiated a request for proposals ("RFP") to supply energy and associated firm capacity from eligible renewable resources ("ERRs") on September 2, 2005, with a goal of negotiating and executing power purchase agreements with ERRs whose proposals are selected pursuant to the RFP.
- B. 251 Repower desires to submit a proposal in response to the RFP.
- C. The Parties desire to keep confidential any confidential or proprietary information disclosed by 251 Repower to SCE as part of 251 Repower submission of a proposal in response to the RFP (the "Proposal"), or any confidential or proprietary information that may be disclosed by SCE to 251 Repower as part of discussions or negotiations with 251 Repower concerning 251 Repower Proposal.

2005 Request for Proposals from Eligible Renewable Energy Resource Suppliers for Electric Energy

Non-Disclosure Agreement

The contents of this document are subject to restrictions on disclosure as set forth herein.

Southern California Edison

AGREEMENT

NOW, THEREFORE, the Parties agree as follows:

1. For purposes of this Agreement, all oral or written communications exchanged between the Parties on or after the Effective Date, as set forth in Section 10 of this Agreement, as part of the Proposal shall be referred to as "Confidential Information." Any such communications must comply with the provisions of Section 6 herein to be considered Confidential Information.

2. The Parties agree to treat Confidential Information as confidential with respect to third parties and shall not disclose Confidential Information except as specifically authorized herein or as specifically agreed to by both Parties in writing.

Accordingly, Parties may disclose Confidential Information only to their employees, directors, financial advisors, attorneys, or accountants who have a strict need to know solely for the purpose of assisting the Party in evaluating the Proposal, or in subsequent discussions or negotiations regarding the Proposal and who read and agree to abide by this Agreement ("Permitted Disclose").

The Parties may also disclose Confidential Information to representatives of their rating agencies who have a strict need to know solely for the purpose of assisting the Party in evaluating the Proposal, so long as the disclosing Party advises the rating agency of the confidential nature of the Confidential Information and uses reasonable efforts to prevent or limit the disclosure of Confidential Information by any such rating agency.

3. SCE may also disclose Confidential Information to the following entities and their staff and divisions thereof in furtherance of the RFP: (i) the California Public Utilities Commission ("CPUC"), (ii) the Procurement Review Group established pursuant to D.02-08-071 and D.03-06-071 ("PRG"), and (iii) the California Energy Commission ("CEC").

Although SCE will seek confidential treatment of any Confidential Information submitted by it to the CPUC, by means of a motion for protective order under Public Utilities Code section 583 and General Order 66-C, or by appropriate application to or agreement with, the PRG and CEC, SCE may disclose Confidential Information under this Paragraph even if no protective order is issued and no confidentiality or non-disclosure agreements are entered into.

4. Notwithstanding anything to the contrary set forth herein, the obligations set forth in this Agreement shall not apply to and the term "Confidential Information" shall not include:

2003 Request for Proposals from Eligible Renewable Energy Resources Suppliers for Electric Energy Non-Disclosure Agreement

Southern California Edison

- a. Information which is in the public domain as of the Effective Date of this Agreement or which later comes into the public domain from a source other than from the other Party or its Permitted Disclosee;
 - b. Information which SCE or 251 Repower can demonstrate in writing was already known to SCE or 251 Repower prior to the effective date of this Agreement;
 - c. Information which comes to SCE or 251 Repower from a bona fide third party source not under an obligation of confidentiality;
 - d. Information which is independently developed by SCE or 251 Repower without use of or reference to Confidential Information or information containing Confidential Information; or
 - e. The fact that 251 Repower submitted a Proposal in response to the RFP.
5. The Parties agree that irreparable damage would occur if this Agreement were not performed in accordance with its terms or were otherwise breached. Accordingly, a Party may be entitled to seek an injunction or injunctions to prevent breach of this Agreement and to enforce specifically its provisions in any court of competent jurisdiction, in addition to any other remedy to which the party may be entitled by law or equity.
6. Confidential Information submitted to a Party in hard copy or electronic form shall bear on each page the following legend:

**"CONFIDENTIAL INFORMATION,
THE CONTENTS OF THIS DOCUMENT ARE SUBJECT TO
A NON-DISCLOSURE AGREEMENT"**

7. The Parties agree not to introduce (in whole or in part) into evidence or otherwise voluntarily disclose in any administrative or judicial proceeding, any Confidential Information, except as required by law or as SCE or 251 Repower may be required to disclose to duly authorized governmental or regulatory agencies, including the CPUC or any division thereof, in order to demonstrate the reasonableness of its actions.
8. Nothing in this Agreement is intended to waive any attorney-client, work-product or other privilege applicable to any statement, document, communication, or other material of a Party or the Parties.
9. Any notice or communication given pursuant to this Agreement shall be in writing and
- (i) Delivered personally, in which case delivery is given upon written acknowledgment of receipt;

2005 Request for Proposals from Eligible Renewable Energy Resource Suppliers for Electric Energy
Non-Disclosure Agreement

The contents of this document are subject to restrictions on disclosure as set forth herein.

Southern California Edison

- (ii) Mailed by registered or certified mail; postage prepaid, in which case delivery is given on the earlier of the actual date of delivery, as set forth in the return receipt, or three (3) days from the date posted, or
- (iii) Delivery by telecopy, in which case delivery is given upon actual receipt of the entire document.

In any of these cases, the writing shall be sent or delivered as follows (subject to change by either Party by notifying the other Party pursuant to this paragraph).

If to SCE:

Southern California Edison Company
 2244 Walnut Grove Avenue
 Rosemead, CA 91770
 Attention: Director, QF Resources
 Telephone: (626) 302-1823
 Facsimile: (626) 302-1109

If to 251 Repower:

Caithness 251 Wind Repower, LLC
 565 Fifth Avenue, 29th Floor
 New York, NY 10017
 Attention: Vice President, Asset Management
 Telephone: (212) 782-0523
 Facsimile: (212) 921-9239

With copy to:

Darrel A. Grant
 565 Fifth Avenue, 29th Floor
 New York, NY 10017
 Telephone: (917) 472-4577
 Facsimile: (212) 921-9239

- 10. This Agreement shall be effective as of the date of the last signature to this Agreement and shall terminate five years from such date or earlier upon the mutual written consent of the Parties (the "Effective Date").
- 11. This Agreement shall be interpreted in accordance with the plain meaning of its terms and not strictly for or against any of the Parties hereto.

This Agreement shall be construed as if each party was its author and each Party hereby adopts the language of this Agreement as if it were its own.

2005 Request for Proposals from Eligible Renewable Energy Resource Suppliers for Electric Energy
Non-Disclosure Agreement

Southern California Edison

12. Any waiver of the requirements and provisions of this Agreement shall be in writing. The failure of either Party to enforce at any time any of the provisions of the Agreement or to require at any time performance by the other Party of any of such provisions, shall in no way be construed as a waiver of such provision or a relinquishment of the right thereafter to enforce such provision.
13. This Agreement may not be modified except by a written agreement executed by both Parties.
14. This Agreement shall be interpreted, governed and construed under the laws of the State of California (without giving effect to its conflict of laws provisions that could apply to the law of another jurisdiction) as if executed in and to be wholly performed within the State of California.
15. This Agreement fully expresses the Parties' agreement concerning the subject matter hereof and supersedes any prior agreements or understandings regarding the same subject matter.
16. The signatories hereto represent that they have been duly authorized to enter into this Agreement on behalf of the Party for whom they sign.
17. If any provision hereof is unenforceable or invalid, it shall be given effect to the extent it may be enforceable or valid, and such enforceability or invalidity shall not affect the enforceability or invalidity of any other provision of this Agreement.

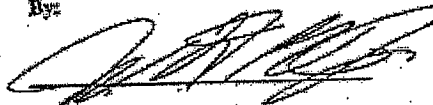
Southern California Edison

18. This Agreement may be signed in counterparts, each of which shall be deemed an original.

CAITHNESS 251 WIND REPOWER, LLC

a Delaware limited liability company.

By:



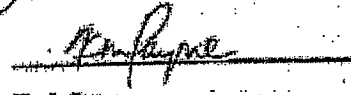
James D. Bishop, Jr.
Vice Chairman

Date: 11/19/05

SOUTHERN CALIFORNIA EDISON COMPANY,

a California corporation

By:



Kevin Payne
Director, QF Resources

Date: 11/19/05

2005 Request for Proposals from Eligible Renewable Energy Resource Suppliers for Electric Energy

Non-Disclosure Agreement

The contents of this document are subject to restrictions on disclosure as set forth herein.

**** End of EXHIBIT J ****

The contents of this document are subject to restrictions on disclosure as set forth herein.

EXHIBIT K

*Time of Delivery Period Definitions,
Energy Payment Allocation Factors,
and
Sample Hours by Time of Delivery Periods*

The contents of this document are subject to restrictions on disclosure as set forth herein.

EXHIBIT K

*Time of Delivery Period Definitions,
Energy Payment Allocation Factors,
and
Sample Hours by Time of Delivery Periods*

Time of Delivery Periods ("TOD Periods")			
<i>TOD Period</i>	<i>Summer Jun 1st – Sep 30th</i>	<i>Winter Oct 1st – May 31st</i>	<i>Applicable Days</i>
On-Peak	Noon – 6:00 p.m.	Not Applicable.	Weekdays except Holidays.
Mid-Peak	8:00 a.m. – Noon	8:00 a.m. - 9:00 p.m.	Weekdays except Holidays.
	6:00 p.m. – 11:00 p.m.		Weekdays except Holidays.
Off-Peak	11:00 p.m. – 8:00 a.m.	6:00 a.m. – 8:00 a.m.	Weekdays except Holidays.
		9:00 p.m. – Midnight	Weekdays except Holidays.
	Midnight – Midnight	6:00 a.m. – Midnight	Weekends and Holidays
Super-Off-Peak	Not Applicable.	Midnight – 6:00 a.m.	Weekdays, Weekends and Holidays

The contents of this document are subject to restrictions on disclosure as set forth herein.

<u>Energy Payment Allocation Factors</u>			
<i>Season</i>	<i>TOD Period</i>	<i>Calculation Method</i>	<i>Energy Payment Allocation Factor</i>
Summer	On-Peak	Fixed Value.	1.4251
	Mid-Peak	(Total # hours in month – (1.4251 x # Summer On-Peak hours in month)- (0.8526 x # Summer Off-Peak hours in month)) / #Summer Mid-Peak hours in month	Calculated Value
	Off-Peak	Fixed Value.	0.8526
Winter	Mid-Peak	Fixed Value.	1.2185
	Off-Peak	(Total # hours in month – (1.2185 x # Winter Mid-Peak hours in month)- (0.7760 x # Winter Super-Off-Peak hours in month)) / #Winter Off-Peak hours in month	Calculated Value
	Super-Off-Peak	Fixed Value.	0.7760

“Holiday” is defined as New Year’s Day, Presidents’ Day, Memorial Day, Independence Day, Labor Day, Veterans Day, Thanksgiving Day, or Christmas Day.

When any Holiday falls on a Sunday, the following Monday will be recognized as a Holiday. No change will be made for Holidays falling on Saturday.

The contents of this document are subject to restrictions on disclosure as set forth herein.

Capacity Allocation Factors

<i>Season</i>	<i>TOD Period</i>	<i>Values</i>
Summer	On-Peak	0.1792
	Mid-Peak	.0310
	Off-Peak	0.0006
Winter	Mid-Peak	0.0178
	Off-Peak	.0011
	Super-Off-Peak	0.0007

TOD Hours in 2006

<i>Season</i>	<i>TOD Period</i>	<i>Values</i>
Summer	On-Peak	510
	Mid-Peak	765
	Off-Peak	1653
Winter	Mid-Peak	2184
	Off-Peak	2190
	Super-Off-Peak	1458

*** End of EXHIBIT K ***

The contents of this document are subject to restrictions on disclosure as set forth herein.

EXHIBIT L

Procedure for Partial or Full Return of Development Security

The contents of this document are subject to restrictions on disclosure as set forth herein.

EXHIBIT L

Procedure for Partial or Full Return of Development Security

1. Seller's Request for Development Security Refund.

Seller shall provide Notice to SCE of its request for Development Security refund based upon either of the following:

- (a) Termination pursuant to Sections 2.04(a), 2.04(b), 2.04(c) or Section 5.05; or
- (b) Seller has completed installation of Wind Turbines pursuant to the Generating Facility and Site Description set forth in Exhibit B.

2. Full Return of Development Security for Termination of Agreement.

Provided that SCE does not dispute Seller's Notice of request for Development Security refund pursuant to Item 1(a) above, SCE shall return the Development Security to Seller, or Letter of Credit to the issuing bank, within ten (10) Business Days after such Notice, unless SCE provides timely Notice to Seller that additional days are required to substantiate data.

3. Full or Partial Return of Development Security for Demonstrating Nameplate Contract Capacity.

Unless SCE provides timely Notice to Seller that additional days are required to substantiate data, SCE shall within thirty (30) days after Seller's Notice of request for Development Security refund pursuant to Item 1(b):

- (a) Complete a site visit to verify the Generating Facility was developed in accordance with the Generating Facility description set forth in Exhibit B, as it may be amended in accordance with this Agreement, and to determine the Demonstrated Nameplate Contract Capacity based on the Generating Facility Capacity and the Demonstrated New Turbine Nameplate Capacity based on the portion of the Generating Facility Capacity to be provided by the new Wind Turbines;
- (b) If the Demonstrated New Turbine Nameplate Capacity as determined in Item 3(a) above is greater than or equal to the full New Turbine Nameplate Capacity expected to be installed at the Generating Facility based upon the Final ISO4 Transition Plan,

then Seller shall qualify to receive a full return of the Development Security;

The contents of this document are subject to restrictions on disclosure as set forth herein.

QFID# 6310, Caithness 251 Wind LLC

- (c) If the Demonstrated New Turbine Nameplate Capacity as determined in Item 3(a) above is less than the full New Turbine Nameplate Capacity of the new Wind Turbines expected to be installed at the Generating Facility based upon the Final ISO4 Transition Plan,
- then Seller shall qualify to receive a return of only a portion of the Development Security based upon the level of the Demonstrated New Turbine Nameplate Capacity;*
- (d) Based upon the information in Item 3(a), calculate the amount of Development Security refund due Seller pursuant to Sections 3.04(c) and 3.04(d);
- (e) Provide Notice to Seller of the amount of Development Security being returned pursuant to Item 3(d), the amount of Development Security forfeited, as applicable, and the reason(s) that a forfeiture of all or part of the Development Security is appropriate;
- (f) Return any Development Security due Seller if such Development Security was posted in the form of cash; and
- (g) Return the Letter of Credit to the issuing bank if the total amount of the posted Development Security is due Seller. If Seller is only entitled to a partial return of the Development Security SCE shall submit a drawing certificate on the Letter of Credit for the amount of Development Security forfeited by Seller, after which SCE shall release the remaining balance of the Letter of Credit.

**** End of EXHIBIT L ****

The contents of this document are subject to restrictions on disclosure as set forth herein.

EXHIBIT M

Form of Letter of Credit

The contents of this document are subject to restrictions on disclosure as set forth herein.

QFID# 6310, Caithness 251 Wind LLC

EXHIBIT M

Form Of Letter Of Credit

IRREVOCABLE NONTRANSFERABLE STANDBY

LETTER OF CREDIT

Reference Number: _____

Transaction Date:

BENEFICIARY:

Southern California Edison Company
2244 Walnut Grove Avenue
Risk Control GO#1, Quad 2A
Rosemead, CA 91770

Ladies and Gentlemen:

_____ (the "Bank") hereby establishes this Irrevocable Nontransferable Standby Letter of Credit ("Letter of Credit") in favor of Southern California Edison Company, a California corporation (the "Beneficiary"), for the account of _____, a _____ corporation, also known as QFID ____ (the "Applicant"), for the amount of XXX AND XX/100 Dollars (\$_____) (the "Available Amount"), effective immediately and expiring at 5:00 p.m., California time, on the Expiration Date (as hereinafter defined).

This Letter of Credit shall be of no further force or effect upon the close of business on _____ or, if such day is not a Business Day (as hereinafter defined), on the next preceding Business Day.

For the purposes hereof, "Business Day" shall mean any day on which commercial banks are not authorized or required to close in Los Angeles, California.

Subject to the terms and conditions herein, funds under this Letter of Credit are available to Beneficiary by presentation in compliance on or prior to 5:00 p.m. California time, on or prior to the Expiration Date of the following:

The contents of this document are subject to restrictions on disclosure as set forth herein.

QFID# 6310, Caithness 251 Wind LLC

1. The original of this Letter of Credit and all amendments (or photocopy of the original for partial drawings); and
2. The Drawing Certificate issued in the form of Attachment A attached hereto and which forms an integral part hereof, duly completed and purportedly bearing the signature of an authorized representative of the Beneficiary.

Notwithstanding the foregoing, any drawing hereunder may be requested by transmitting the requisite documents as described above to the Bank by facsimile at _____ or such other number as specified from time to time by the Bank.

The facsimile transmittal shall be deemed delivered when received. It is understood that drawings made by facsimile transmittal are deemed to be the operative instrument without the need of originally signed documents.

Partial drawing of funds shall be permitted under this Letter of Credit, and this Letter of Credit shall remain in full force and effect with respect to any continuing balance;

provided that, the Available Amount shall be reduced by the amount of each such drawing.

This Letter of Credit is not transferable or assignable. Any purported transfer or assignment shall be void and of no force or effect.

Banking charges shall be the sole responsibility of the Applicant.

This Letter of Credit sets forth in full our obligations and such obligations shall not in any way be modified, amended, amplified or limited by reference to any documents, instruments or agreements referred to herein, except only the attachment referred to herein; and any such reference shall not be deemed to incorporate by reference any document, instrument or agreement except for such attachment.

QFID# 6310, Caithness 251 Wind LLC

The Bank engages with the Beneficiary that Beneficiary's drafts drawn under and in compliance with the terms of this Letter of Credit will be duly honored if presented to the Bank on or before the Expiration Date.

Except so far as otherwise stated, this Letter of Credit is subject to the International Standby Practices ISP98 (also known as ICC Publication No. 590), or revision currently in effect (the "ISP"). As to matters not covered by the ISP, the laws of the State of California, without regard to the principles of conflicts of laws there under, shall govern all matters with respect to this Letter of Credit.

AUTHORIZED SIGNATURE for Issuer

(Name)

Title: _____

The contents of this document are subject to restrictions on disclosure as set forth herein.

ATTACHMENT A
DRAWING CERTIFICATE
TO [ISSUING BANK NAME]
IRREVOCABLE NON-TRANSFERABLE STANDBY LETTER OF CREDIT

No. _____

DRAWING CERTIFICATE

Bank

Bank Address

Subject: Irrevocable Non-transferable Standby Letter of Credit

Reference Number: _____

The undersigned _____, an authorized representative of Southern California Edison Company (the "Beneficiary"), hereby certifies to [Issuing Bank Name] (the "Bank"), and _____ (the "Applicant"), with reference to Irrevocable Nontransferable Standby Letter of Credit No. { _____ }, dated _____, (the "Letter of Credit"), issued by the Bank in favor of the Beneficiary, as follows as of the date hereof:

1. The Beneficiary is entitled to draw under the Letter of Credit an amount equal to \$ _____, for the following reason(s) [check applicable provision]:
 -]A. An Event of Default, as defined in the Renewable Power Purchase and Sale Agreement (the "Agreement"), with respect to the Applicant has occurred and is continuing.
 -]B. An Early Termination Date (as defined in the Agreement) has occurred or been designated as a result of an Event of Default (as defined in the Agreement) with respect to the Applicant for which there exist any unsatisfied payment obligations.

The contents of this document are subject to restrictions on disclosure as set forth herein.

QFID# 6310, Caithness 251 Wind LLC

- []C. The Letter of Credit will expire in fewer than 20 Local Business Days (as defined in the Agreement) from the date hereof, and Applicant has not provided Beneficiary alternative Performance Assurance (as defined in the Agreement) acceptable to Beneficiary.
 - []D. The Bank has heretofore provided written notice to the Beneficiary of the Bank's intent not to renew the Letter of Credit following the present Expiration Date thereof ("Notice of Non-renewal"), and Applicant has failed to provide the Beneficiary with a replacement letter of credit satisfactory to Beneficiary in its sole discretion within thirty (30) days following the date of the Notice of Non-renewal.
 - []E. The Beneficiary has not been paid any or all of the Applicant's payment obligations now due and payable under the Agreement.
 - []F. The Beneficiary is entitled to retain the entire Development Security (as defined in the Agreement) as a result of Applicant's failure to achieve Initial Operation (as defined in the Agreement) of the *full* Nameplate Contract Capacity (as defined in the Agreement) by the Startup Deadline (as defined in the Agreement) or any extended Startup Deadline as provided in the Agreement, or the Agreement has terminated due to an Event of default by Applicant prior to the Startup Deadline.
 - []G. The Beneficiary is entitled to retain a portion of the Development Security equal to the product of \$20 per kilowatt times the Unincluded Capacity (as defined in the Agreement) in kilowatts as a result of Applicant demonstrating only a portion of the Nameplate Contract Capacity.
2. Based upon the foregoing, the Beneficiary hereby makes demand under the Letter of Credit for payment of U.S. DOLLARS AND ____/100ths (U.S.\$_____), which amount does not exceed (i) the amount set forth in paragraph 1 above, and (ii) the Available Amount under the Letter of Credit as of the date hereof.
 3. Funds paid pursuant to the provisions of the Letter of Credit shall be wire transferred to the Beneficiary in accordance with the following instructions:

Unless otherwise provided herein, capitalized terms which are used and not defined herein shall have the meaning given each such term in the Letter of Credit.

The contents of this document are subject to restrictions on disclosure as set forth herein.

Southern California Edison

Confidential Information

QFID# 6310, Caithness 251 Wind LLC

IN WITNESS WHEREOF, this Certificate has been duly executed and delivered on behalf of the Beneficiary by its authorized representative as of this ____ day of _____, _____.

Beneficiary: SOUTHERN CALIFORNIA EDISON COMPANY

By:

Name:

Title:

*** End of EXHIBIT M ***

The contents of this document are subject to restrictions on disclosure as set forth herein.

EXHIBIT N

[Intentionally Omitted.]

The contents of this document are subject to restrictions on disclosure as set forth herein.

EXHIBIT N

[Intentionally Omitted.]

**** End of EXHIBIT N****

The contents of this document are subject to restrictions on disclosure as set forth herein.

EXHIBIT O

Independent Performance Engineer

The contents of this document are subject to restrictions on disclosure as set forth herein.

EXHIBIT O

Independent Performance Engineer

1. Introduction.

This Exhibit O sets forth the responsibilities of the Independent Performance Engineer relative to the development of the Generating Facility Performance Model.

2. Independent Performance Engineer's Responsibilities.

The Independent Performance Engineer shall:

- (a) Execute a non-disclosure agreement with Seller and SCE that requires it to maintain the confidentiality of all data and information relating to:
 - (i) This Agreement;
 - (ii) The Generating Facility;
 - (iii) The Generating Facility Power Curve; and
 - (iv) The Generating Facility Performance Model.
- (b) Submit a set of design criteria for the development of the Generating Facility Power Curve to SCE and Seller;
- (c) Develop and submit to SCE for approval and Seller for review the Generating Facility Power Curve;
- (d) Submit a set of design criteria for the development of the Generating Facility Performance Model to SCE and Seller;
- (e) Develop and submit to SCE for approval and Seller for review the Generating Facility Performance Model;
- (f) Test the Generating Facility Power Curve and Generating Facility Performance Model using the Actual Site Wind Speeds and Metered Amounts for first, second and third Firm Operating Period Years;
- (g) Compare the Firm Operating Period Year Estimate of Metered Amounts produced by the Generating Facility Performance Model against the power curve for each wind turbine generator model installed at the Generating Facility;

The contents of this document are subject to restrictions on disclosure as set forth herein.

QFID# 6310, Caithness 251 Wind LLC

- (h) Review Seller's designs and specifications for the Meteorological Equipment;
- (i) Review Seller's procedures for maintenance and calibration of the Meteorological Equipment;
- (j) Review Seller's plan for collecting Actual Site Wind Speed data;
- (k) Review Seller's Generating Facility Performance Model Reports for the second and third Firm Operating Period Years.

**** End of EXHIBIT O****

The contents of this document are subject to restrictions on disclosure as set forth herein.

EXHIBIT P

ISO Change Cost Payment Calculation

The contents of this document are subject to restrictions on disclosure as set forth herein.

EXHIBIT P
ISO Change Cost Payment Calculation

1. Introduction.

The ISO Change Cost for any Firm Operating Period Year shall be calculated in accordance with the following formula:

$$\text{ISO Change Cost} = \sum_{\substack{\text{Firm Operating Period Year,} \\ \text{First Hour}}}^{\substack{\text{Firm Operating Period Year,} \\ \text{Last Hour}}} \left\{ A_{\text{before}} + B_{\text{before}} + C_{\text{before}} + D_{\text{before}} \right\} - \sum_{\substack{\text{Firm Operating Period Year,} \\ \text{First Hour}}}^{\substack{\text{Firm Operating Period Year,} \\ \text{Last Hour}}} \left\{ A_{\text{after}} + B_{\text{after}} + C_{\text{after}} + D_{\text{after}} \right\}$$

Where:

- (a) As used herein, "Seller's Actual Revenue" means the total of payments and tax benefits received by Seller in any Firm Operating Period Year pursuant to Section 4.01; and
- (b) As used herein, "Seller's Adjusted Revenue" means the calculated amount of Seller's revenue in any Firm Operating Period Year based on adjustments to Seller's Actual Revenue, in order to measure the hypothetical amount of revenue that would have been realized by Seller during the Firm Operating Period Year using the ISO's methodology and procedures that would have applied either *as of the Effective Date* or *before* any Change in ISO Tariff as compared to the ISO's methodology and procedures that apply during the Firm Operating Period Year, as specified for each factor below.

2. Formula Factors.

The formula factors A_{before} , A_{after} , B_{before} , B_{after} , C_{before} , C_{after} , D_{before} and D_{after} are described as follows:

The contents of this document are subject to restrictions on disclosure as set forth herein.

- (a) Changes in ISO Allocation of Transmission Congestion and ISO Transmission Loss Methodologies Impacting Delivered Amounts.

A_{before} = Seller's Adjusted Revenue based on calculating the adjustments to Seller's Actual Revenue, either up or down, under the following circumstances:

- (i) Changes In Methodology For Allocating Transmission Congestion Which Impact Delivered Amounts.

Upon the occurrence of congestion on the transmission system, changes to Seller's actual Delivered Amounts during the Firm Operating Period Year that would result from applying the ISO's methodology and procedures in effect *immediately prior* to the first Change in ISO Tariff; and

- (ii) Changes In Loss Methodology Which Impact Delivered Amounts.

Changes in Seller's actual Delivered Amounts during the Firm Operating Period Year that would result from Seller self-providing all ISO-assessed transmission losses in Seller's Delivered Amounts by applying the GMM using the ISO GMM procedures in effect as of the Effective Date and the average values of GMM for the twelve (12) calendar months *immediately prior* to the first Change in ISO Tariff.

A_{after} = Seller's Actual Revenue during the Firm Operating Period Year.

- (b) Changes in ISO Tariff Impacting ISO Charges for Transmission Congestion.

B_{before} = This value shall be zero (0).

B_{after} = Actual amount of ISO charges paid by Seller during the Firm Operating Period Year relating to congestion for delivery of Product from the Generating Facility to the Delivery Point.

- (c) Changes in ISO Tariff Impacting ISO Charges for Transmission Losses.

The contents of this document are subject to restrictions on disclosure as set forth herein.

QFID# 6310, Caithness 251 Wind LLC

C_{before} = This value shall be zero (0).

C_{after} = Actual amount of ISO charges paid by Seller during the Firm Operating Period Year relating to transmission losses for delivery of Product from the Generating Facility to the Delivery Point.

(d) Changes in ISO Tariff Impacting PIRP.

D_{before} = Calculated amount of ISO charges that would have been paid by Seller during the Firm Operating Period Year under the Participating Intermittent Resource Program using the ISO's methodology and procedures *as of the Effective Date* attributable solely to the Generating Facility.

D_{after} = Actual ISO charges paid by Seller during the Firm Operating Period Year resulting from changes in, or termination of, the Participating Intermittent Resource Program.

3. ISO Change Cost Payments.

(a) ISO Change Cost Payment to Seller.

If the ISO Change Cost is a *positive* number that is greater than the ISO Change Cost Threshold Amount, then SCE shall pay to Seller an ISO Change Cost Payment calculated as follows:

$$\text{ISO CHANGE COST PAYMENT TO SELLER} = E - F$$

Where:

E = ISO Change Cost as calculated above.

F = ISO Change Cost Threshold Amount as set forth in Section 11.04.

(b) ISO Change Cost Payment to Seller.

If the ISO Change Cost is a *negative* number the magnitude of which is greater than the ISO Change Cost Threshold Amount, then Seller shall pay to SCE an ISO Change Cost Payment calculated as follows:

The contents of this document are subject to restrictions on disclosure as set forth herein.

QFID# 6310, Caithness 251 Wind LLC

$$\text{ISO CHANGE COST PAYMENT TO SCE} = (-1 \times E) - F$$

Where:

E = ISO Change Cost as calculated above.

F = ISO Change Cost Threshold Amount as set forth in Section 11.04.

**** End of EXHIBIT P****

The contents of this document are subject to restrictions on disclosure as set forth herein.

EXHIBIT Q

Meteorological Equipment Specifications

The contents of this document are subject to restrictions on disclosure as set forth herein.

EXHIBIT Q

Meteorological Equipment Specifications

Pursuant to Section 3.22, Seller shall install and maintain a Meteorological Station which shall be equipped with the Meteorological Equipment meeting the specifications set forth in this Exhibit Q. SCE and Seller acknowledge that SCE may update this Exhibit Q from time to time in order to accommodate industry standards.

1. Equipment Stations.

- (a) There shall be two (2) equipment stations per location and each station shall be comprised of the following:
 - (i) Heated Wind Sensors
 - (ii) Air Temp Sensors
 - (iii) Barometer Pressure (with DCP sensor).
- (b) Equipment stations shall be set at two (2) height locations from ground level (e.g., 33 feet at a location that represents the hub center of the turbines or at a minimum of 100 feet).

2. Attributes of Station Locations.

The equipment station locations should be unencumbered by tower shadow or other equipment. At most locations the weather station tower is best placed in front of generating turbines on the upwind side of the wind park. SCE recommends Seller to coordinate with SCE representatives in order to review the tower site locations for the equipment stations.

1. Communication.

Seller shall communicate meteorological data to SCE via a system consistent with SCE's employed methods at the time of installation. A list of qualified equipment appears in Section 4 below. Such equipment is available through SCE's approved weather station vendor, Vaisala Inc.

4. Qualified Equipment.

- (a) MAWS301 AWS System
 - (i) MAWS301 Basic Basic Assembly for MAWS301 Automatic Weather Station, including following modules and functions:

The contents of this document are subject to restrictions on disclosure as set forth herein.

QFID# 6310, Caithness 251 Wind LLC

- QML201 AWS Logger with 1.7 MB Flash memory for data logging
 - QBR101B Battery regulator
 - ENC542PLM Equipment enclosure with backup battery mounting accessories and internal wiring
 - Bottom plate with signal connectors for sensors and peripheral equipment
 - MAWS LIZARD Set-up software
 - MAWS Terminal software
- (ii) ENC542SHIELD Radiation Shield for MAWS301 enclosure
- (iii) QMZ101 QMZ101 Terminal/maintenance cable for MAWS
- (i) QMBATT12 Back-up battery - 12 Ah/12V, installed in MAWS enclosure, includes wiring
- (a) Sensors
- (i) QMT110 Air temperature sensor with 10 m cable and connector
- DTR502P22 Radiation shield for QMT110 (air temp sensor) including mounting accessories to a pole/mast (60-100 mm)
- (ii) QMT103 Air temperature sensor with 5-m cable and connector
- 212417 Extension cables, 25m, shielded, 5-pin F-M connector for QMT103 sensor
 - DTR502P22 Radiation shield for QMT103 (air temp sensor) including mounting accessories to a pole/mast (60-100 mm)
- (iii) PMT16A Barometric pressure sensor installed within the MAWS301 enclosure
- (iv) M301-WS425STDH Heated Ultrasonic Wind Sensor with RS485 & power output cable, sensor mounting on 60 mm dia. pole/mast and 36 VDC power supply

The contents of this document are subject to restrictions on disclosure as set forth herein.

QFID# 6310, Caithness 251 Wind LLC

(b) Powering.

- (i) MCP150-M3-115 Mains (AC) power supply, installed in enclosure (ENC542PLM), incl. wiring and surge arrestors for 115 VAC

(c) Communication.[‡]

- (i) DSI485ASET48-M3 Isolated RS-485 module - 2 wire connection, incl. extra surge arrestors for both lines, installed in MAWS enclosure *communications from logger to WS425 sensors*
- (ii) DME421-M3 Ethernet interface serial port to VSAT transmitter. *Module mounted within MAWS enclosure*
- (iii) VSAT Hardware, VSAT transmitter, cables with connectors, testing of each site, antenna positioners, mounting hardware. Installation at each site should include program fee for VSAT module.

(d) Install Accessories.

- (i) APPK-60SET Mast mounting for MAWS enclosure on a 50-60 mm dia pole/mast/tower
- (ii) QSA124PT Surge Arrestor for QMT103/110 Temp sensor lines (4-wire)
- (iii) #010411 Shielded RS485 cabling from MAWS301 to WS425STDH - 10m cables
- (iv) QSA224DC Surge Arrestor for RS485 lines, wind sensors at 10m
- (v) WS425STDH-SPEC-30m Shielded RS485 cabling from MAWS301 to WS425STDH - 30m cables
- (vi) QSA224DC Surge Arrestor for RS485 lines, wind sensors at 30m

*** End of EXHIBIT Q***

[‡] The Satellite communication requires an unencumbered south-by-south west view of the sky for antenna placement. Weather Station data will be transmitted to SCE consistent with the employed methods at the time of installation.

The contents of this document are subject to restrictions on disclosure as set forth herein.

EXHIBIT R

*Baseline Infrastructure Configuration and
Baseline Infrastructure Costs*

The contents of this document are subject to restrictions on disclosure as set forth herein.

EXHIBIT R

*Baseline Infrastructure Configuration and
Baseline Infrastructure Costs*

Baseline Infrastructure Costs assumes the installation of one ISO revenue meter and the use of the existing PTs and CTs. The new ISO revenue and existing revenue meters would be used to measure the output from the new QFID and the existing QFIDs.

Infrastructure Baseline Cost

Scope & Cost Estimate

Meter	\$4,600
Enclosure	\$10,500
Labor	\$8,000
Telemeter	\$5,000
PT & CT	\$6,900
Total	\$35,000

Any additional costs to the Baseline Infrastructure Costs (and adjustments to the Energy Price) will be driven by change of scope for additional metering/collection system needs

***** End of EXHIBIT R*****

EXHIBIT S

SCE Penalties and ISO Sanctions

The contents of this document are subject to restrictions on disclosure as set forth herein.

EXHIBIT S

SCE Penalties and ISO Sanctions

This Exhibit S sets forth the procedure for determining Seller's liability for an SCE Penalty or an ISO Sanction (as described below) in the event Seller fails to comply with the availability forecasting requirements of Exhibit D.

1. Determining Potential Applicability of SCE Penalty.

- (a) For any Settlement Interval in which Seller is eligible for the benefits of PIRP or where any Seller ineligibility for the benefits of PIRP is a result of conduct by SCE, Seller shall have no obligation for an SCE Penalty.
- (b) For any Settlement Interval in which Seller is not eligible for the benefits of PIRP due to its own conduct, SCE will review the Actual Availability Report to determine if Seller complied with its obligation as set forth in Exhibit D to provide availability forecasts for the month covered by the report. If SCE determines that:
 - (i) Seller did not comply with its availability forecasting requirements for any hour during the month; and
 - (ii) The sum of Energy Deviations for each of the six Settlement Intervals in the given hour exceeds the Performance Tolerance Band (as defined below);

then Seller may be responsible for SCE Penalties as set forth below.

- (c) The Performance Tolerance Band, in MWh, shall be equal to:
 - (i) Three percent (3%) times
 - (ii) Nameplate Contract Capacity times
 - (iii) One (1) hour, i.e., the interval of time for monitoring availability forecasting requirements.

2. SCE Penalty.

The contents of this document are subject to restrictions on disclosure as set forth herein.

QFID# 6310, Caithness 251 Wind LLC

- (a) Subject to sections 2(b) and 2(c) below, the SCE penalty amount shall be one hundred dollars per MW (\$100/MW) for each MW of availability deviation, or any portion thereof, in every hour for which the conditions in Sections 1(a)-(b) have been met ("SCE Penalty").
- (b) The SCE Penalty will be waived the first hour and any subsequent hours of the first calendar day in each month in which Seller fails to meet the requirements in Sections 1(a)-(b) above.
- (c) The SCE Penalty will be assessed during any hour thereafter in that calendar month in which Seller fails to meet the requirements in Sections 1(a)-(c).

3. ISO Sanctions.

Seller shall be liable to reimburse SCE for all ISO Sanctions incurred by SCE as a result of Seller's failure to adhere to its obligations under the ISO Tariff or any ISO directive, as such directive may be communicated to Seller by SCE.

4. Billing and Documentation of ISO Sanctions.

- (a) The ISO Sanctions will be available for billing approximately one hundred twenty (120) days following the last day of a calendar month for electrical deliveries during that month or thirty (30) days after the ISO final settlement data is available to SCE for such deliveries, whichever is sooner.
- (b) SCE shall provide to Seller the applicable back-up data used for validating ISO Sanctions.

*** End of EXHIBIT S***

The contents of this document are subject to restrictions on disclosure as set forth herein.

EXHIBIT T

Actual Availability Report

The contents of this document are subject to restrictions on disclosure as set forth herein.

EXHIBIT T

Actual Availability Report

Pursuant to Section 3.24, Seller shall prepare an Actual Availability Report in accordance with the procedures described in this Exhibit T.

1. Availability Workbook.

Seller shall (1) collect the measurement data, listed in Item 2 below, in one (1) or more Microsoft Excel Workbooks (the "Availability Workbook") provided in a form and naming convention approved by SCE and (2) electronically send the Availability Workbook to an address provided by SCE.

The Actual Availability Report shall reflect the sum of the Settlement Interval Actual Available Capacity of all generators as measured by such generator's internal turbine controller.

2. Log of Availability.

The Availability Workbook shall be created on a single, dedicated worksheet and shall be in the form of Attachment 1 to this Exhibit T.

The data presented in the Availability Workbook shall not reflect any electric energy losses between the ISO Approved Meter and the Delivery Point.

QFID# 6310, Caithness 251 Wind LLC

ATTACHMENT 1

Actual Availability Report
 (Form of Microsoft Excel File Attachment to Email Notice)

Settlement Interval No.		Date	QFID - [Seller]																							
			HE1	HE2	HE3	HE4	HE5	HE6	HE7	HE8	HE9	HE10	HE11	HE12	HE13	HE14	HE15	HE16	HE17	HE18	HE19	HE20	HE21	HE22	HE23	HE24
1		mm/dd/yyyy																								
2		mm/dd/yyyy																								
3		mm/dd/yyyy																								
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The contents of this document are subject to restrictions on disclosure as set forth herein.

The contents of this document are subject to restrictions on disclosure as set forth herein.

AMENDMENT NO. 1

To The

RENEWABLE POWER PURCHASE AND SALE AGREEMENT

Between

SOUTHERN CALIFORNIA EDISON COMPANY

And

TERRA-GEN 251 WIND, LLC

RAP ID #6310

This Amendment No. 1 ("Amendment No. 1") to the Agreement (as that term is defined below) is entered into between Southern California Edison Company, a California corporation ("SCE"), and Terra-Gen 251 Wind, LLC, a Delaware limited liability company (as successor in interest to Caithness 251 Wind, LLC, "Seller"). SCE and Seller are hereinafter sometimes referred to individually as a "Party" and jointly as the "Parties". Capitalized terms used and not otherwise defined in this Amendment No. 1 shall have the meanings ascribed to such terms in the Agreement.

RECITALS

The Parties enter into this Amendment No. 1 with reference to the following facts:

- A. SCE and Seller are Parties to that certain Renewable Power Purchase and Sale Agreement, dated as of November 15, 2006 (as amended from time to time, the "Agreement"), under which, among other things, Seller will sell to SCE, and SCE will purchase from Seller, Product upon commencement of the Term.
- B. Pursuant to Section 2.04(a)(v)(a) of the Agreement, on August 27, 2009, Seller provided Notice to SCE that the Current Turbine Costs exceed 105% of the Estimated Turbine Costs. Seller also provided a report from a Turbine Cost Expert verifying such claim.
- C. Pursuant to Section 2.04(a)(v)(c), the Parties are to negotiate a new Energy Price. Under Section 2.04(a)(v), if the Parties are not able to agree upon a new Energy Price within ninety (90) days of Seller's Notice pursuant to Section 2.04(a)(v)(a) (i.e. November 26, 2009), either Party shall have the right to terminate the Agreement by providing a Notice of termination on or before one hundred twenty (120) days from Seller's Notice provided under Section 2.04(a)(v)(a) (i.e. December 26, 2009).

The contents of this document are subject to restrictions on disclosure as set forth in the Agreement.

- D. As of the effective date of this Amendment No. 1 (as set forth below), the Parties have not reached agreement on a new Energy Price.
- E. The Parties now wish to amend the Agreement to provide for an extension of the Parties' rights to terminate the Agreement in the event that they are unable to reach an agreement on a new Energy Price, as set forth herein.
- F. The Parties also wish to provide that any new Energy Price that may be agreed to pursuant to the negotiations described above will be subject to CPUC Approval.

AGREEMENT

In consideration of the promises, mutual covenants and agreements hereinafter set forth, and for other good and valuable consideration, as set forth herein, the Parties agree to amend the Agreement as follows:

1. AMENDMENT

- (a) Section 2.04(a)(v) is amended to replace the words "ninety (90)" with "one hundred fifty (150)" and replace the words "one hundred twenty (120)" with "one hundred eighty (180)" in the first sentence thereof.
- (b) A new Section 2.04(a)(vii) is added as follows:
 - "(vii) In the event that the Parties reach an agreement on a new Energy Price pursuant to the negotiations described in Section 2.04(a)(v)(c) ("Energy Price Amendment"), if CPUC Approval has not been obtained within one hundred eighty (180) days after SCE files the request for CPUC Approval and a Notice of termination is given on or before two hundred tenth (210) days after SCE files the request for CPUC Approval.

For purposes of this Section 2.04(a)(vii), CPUC Approval shall be defined as follows:

CPUC Approval is a final and non-appealable order of the CPUC, without conditions or modifications unacceptable to the Parties, or either of them, which contains the following terms:

- (i) Approves this Agreement, as amended by an Energy Price Amendment, in its entirety, including payments to be made by SCE, subject to CPUC review of SCE's administration of the PPA, as amended by an Energy Price Amendment;

The contents of this document are subject to restrictions on disclosure as set forth in the Agreement.

- (ii) Finds that any procurement pursuant to the PPA, as amended by an Energy Price Amendment, is procurement from an eligible renewable energy resource for purposes of determining SCE's compliance with any obligation that it may have to procure eligible renewable energy resources pursuant to the California Renewables Portfolio Standard (Public Utilities Code Section 399.11 *et seq.*), Decision 03-06-071, or other applicable law; and
- (iii) Finds that any procurement pursuant to this Agreement, as amended by an Energy Price Amendment, constitutes incremental procurement or procurement for baseline replenishment by SCE from an eligible renewable energy resource for purposes of determining SCE's compliance with any obligation to increase its total procurement of eligible renewable energy resources that it may have pursuant to the RPS Legislation, CPUC Decision 03-06-071, or other Applicable Law.

CPUC Approval will be deemed to have occurred on the date that a CPUC decision containing such findings becomes final and non-appealable.”

- (c) Exhibit A is amended by adding the following defined terms thereto:

“62.1 “Energy Price Amendment” has the meaning set forth in Section 2.04(a)(vii).”

2. MISCELLANEOUS

- (a) Reservation of Rights. Each of the Parties expressly reserves all of its respective rights and remedies under the Agreement.
- (b) Legal Effect. Except as expressly modified as set forth herein, the Agreement remains unchanged and, as so modified, the Agreement shall remain in full force and effect.
- (c) Governing Law. THIS AMENDMENT NO. 1 AND THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED, ENFORCED AND PERFORMED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW. TO THE EXTENT ENFORCEABLE AT SUCH TIME, EACH PARTY WAIVES ITS RESPECTIVE RIGHT TO ANY JURY TRIAL WITH RESPECT TO ANY LITIGATION ARISING

The contents of this document are subject to restrictions on disclosure as set forth in the Agreement.

UNDER OR IN CONNECTION WITH THIS AMENDMENT NO. 1.

- (d) Successors and Assigns. This Amendment No. 1 shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns.
- (e) Authorized Signatures; Notices. Each Party represents and warrants that the person who signs below on behalf of that Party has authority to execute this Amendment No. 1 on behalf of such Party and to bind such Party to this Amendment No. 1. Any written notice required to be given under the terms of this Amendment No. 1 shall be given in accordance with the terms of the Agreement.
- (f) Effective Date. This Amendment No. 1 shall be deemed effective as of the date upon which the last Party executes this Amendment No. 1.
- (g) Further Agreements. This Amendment No. 1 shall not be amended, changed, modified, abrogated or superseded by a subsequent agreement unless such subsequent agreement is in the form of a written instrument signed by the Parties.
- (h) Counterparts; Electronic Signatures. This Amendment No. 1 may be executed in one or more counterparts, each of which will be deemed to be an original of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement. The exchange of copies of this Amendment No. 1 and of signature pages by facsimile transmission, Portable Document Format (i.e., PDF), or by other electronic means shall constitute effective execution and delivery of this Amendment No. 1 as to the Parties and may be used in lieu of the original Amendment No. 1 for all purposes.

[Remainder of Page Left Intentionally Blank.]

RAP ID #6310, Caithness 251 Wind, LLC


IN WITNESS WHEREOF, the Parties hereto have caused this Amendment No. 1 to be executed by their duly authorized representatives on the dates indicated below their respective signatures.

TERRA-GEN 251 WIND, LLC, a Delaware limited liability company.	SOUTHERN CALIFORNIA EDISON COMPANY, a California corporation.
By: _____ Matthew W. Scobee Senior Vice President	By: <i>Mike Marelli</i> _____ Mike Marelli Director, Contract Origination and Analysis
Date: _____	Date: <i>12/23/09</i> _____

The contents of this document are subject to restrictions on disclosure as set forth in the Agreement.

Amendment No. 1 to Renewable Power Purchase and Sale Agreement

IN WITNESS WHEREOF, the Parties hereto have caused this Amendment No. 1 to be executed by their duly authorized representatives on the dates indicated below their respective signatures.

TERRA-GEN 251 WIND, LLC, a Delaware limited liability company.	SOUTHERN CALIFORNIA EDISON COMPANY, a California corporation.
By:  Matthew W. Scobee Senior Vice President	By: Mike Marelli Director, Contract Origination and Analysis
Date: <u>12/23/09</u>	Date: _____

IN WITNESS WHEREOF, the Parties hereto have caused this Amendment No. 1 to be executed by their duly authorized representatives on the dates indicated below their respective signatures.

TERRA-GEN 251 WIND, LLC, a Delaware limited liability company.	SOUTHERN CALIFORNIA EDISON COMPANY, a California corporation.
By:  Matthew W. Scobee Senior Vice President	By: Mike Marelli Director, Contract Origination and Analysis
Date: <u>12/23/09</u>	Date: _____

AMENDMENT NO. 2

To The

RENEWABLE POWER PURCHASE AND SALE AGREEMENT

Between

SOUTHERN CALIFORNIA EDISON COMPANY

And

TERRA-GEN 251 WIND, LLC

RAP ID #6310

This Amendment No. 2 ("Amendment No. 2") to the Agreement (as that term is defined below) is entered into between Southern California Edison Company, a California corporation ("SCE"), and Terra-Gen 251 Wind, LLC, a Delaware limited liability company (as successor in interest to Caithness 251 Wind, LLC, "Seller"). SCE and Seller are hereinafter sometimes referred to individually as a "Party" and jointly as the "Parties". Capitalized terms used and not otherwise defined in this Amendment No. 2 shall have the meanings ascribed to such terms in the Agreement.

RECITALS

The Parties enter into this Amendment No. 2 with reference to the following facts:

- A. SCE and Seller are Parties to that certain Renewable Power Purchase and Sale Agreement, dated as of November 15, 2006 (as amended by that certain Amendment No. 1, dated as of December 23, 2009, and as further amended from time to time, the "Agreement"), under which, among other things, Seller will sell to SCE, and SCE will purchase from Seller, Product upon commencement of the Term.
- B. Pursuant to Section 2.04(a)(v)(a) of the Agreement, on August 27, 2009, Seller provided Notice to SCE that the Current Turbine Costs exceed 105% of the Estimated Turbine Costs. Seller also provided a report from a Turbine Cost Expert verifying such claim.
- C. Pursuant to Section 2.04(a)(v)(c), the Parties are to negotiate a new Energy Price. Under Section 2.04(a)(v), if the Parties are not able to agree upon a new Energy Price within one hundred fifty (150) days of Seller's Notice pursuant to Section 2.04(a)(v)(a) (i.e. January 25, 2010), either Party shall have the right to terminate the Agreement by providing a Notice of termination on or before one hundred eighty (180) days from Seller's Notice provided under Section 2.04(a)(v)(a) (i.e. February 24, 2010).

The contents of this document are subject to restrictions on disclosure as set forth in the Agreement.

- D. As of the effective date of this Amendment No. 2 (as set forth below), the Parties have not reached agreement on a new Energy Price.
- E. The Parties now wish to amend the Agreement to provide for a further extension of the Parties' rights to terminate the Agreement in the event that they are unable to reach an agreement on a new Energy Price, as set forth herein.

AGREEMENT

In consideration of the promises, mutual covenants and agreements hereinafter set forth, and for other good and valuable consideration, as set forth herein, the Parties agree to amend the Agreement as follows:

1. AMENDMENT

- (a) Section 2.04(a)(v) is amended to replace the words "one hundred fifty (150)" with "two hundred ten (210)" and replace the words "one hundred eighty (180)" with "two hundred forty (240)" in the first sentence thereof.

2. MISCELLANEOUS

- (a) Reservation of Rights. Each of the Parties expressly reserves all of its respective rights and remedies under the Agreement.
- (b) Legal Effect. Except as expressly modified as set forth herein, the Agreement remains unchanged and, as so modified, the Agreement shall remain in full force and effect.
- (c) Governing Law. THIS AMENDMENT NO. 2 AND THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED, ENFORCED AND PERFORMED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW. TO THE EXTENT ENFORCEABLE AT SUCH TIME, EACH PARTY WAIVES ITS RESPECTIVE RIGHT TO ANY JURY TRIAL WITH RESPECT TO ANY LITIGATION ARISING UNDER OR IN CONNECTION WITH THIS AMENDMENT NO. 2.
- (d) Successors and Assigns. This Amendment No. 2 shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns.
- (e) Authorized Signatures; Notices. Each Party represents and warrants that the

The contents of this document are subject to restrictions on disclosure as set forth in the Agreement.

person who signs below on behalf of that Party has authority to execute this Amendment No. 2 on behalf of such Party and to bind such Party to this Amendment No. 2. Any written notice required to be given under the terms of this Amendment No. 2 shall be given in accordance with the terms of the Agreement.

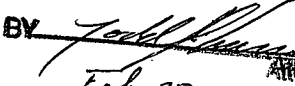
- (f) Effective Date. This Amendment No. 2 shall be deemed effective as of the date upon which the last Party executes this Amendment No. 2.
- (g) Further Agreements. This Amendment No. 2 shall not be amended, changed, modified, abrogated or superseded by a subsequent agreement unless such subsequent agreement is in the form of a written instrument signed by the Parties.
- (h) Counterparts; Electronic Signatures. This Amendment No. 2 may be executed in one or more counterparts, each of which will be deemed to be an original of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement. The exchange of copies of this Amendment No. 2 and of signature pages by facsimile transmission, Portable Document Format (i.e., PDF), or by other electronic means shall constitute effective execution and delivery of this Amendment No. 2 as to the Parties and may be used in lieu of the original Amendment No. 2 for all purposes.

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RAP ID #6310, Caithness 251 Wind, LLC



IN WITNESS WHEREOF, the Parties hereto have caused this Amendment No. 2 to be executed by their duly authorized representatives on the dates indicated below their respective signatures.

TERRA-GEN 251 WIND, LLC, a Delaware limited liability company.	SOUTHERN CALIFORNIA EDISON COMPANY, a California corporation.
By:  Matthew W. Scobee Senior Vice President	By:  Mike Marelli Director, Contract Origination and Analysis
Date: <u>2/22/10</u>	Date: <u>2/24/10</u>

APPROVED
STEPHEN E. PICKETT
Sr. Vice President and
General Counsel
BY 
Feb 23 2010

RAP ID #6310, Caithness 251 Wind, LLC

IN WITNESS WHEREOF, the Parties hereto have caused this Amendment No. 2 to be executed by their duly authorized representatives on the dates indicated below their respective signatures.

TERRA-GEN 251 WIND, LLC, a Delaware limited liability company.	SOUTHERN CALIFORNIA EDISON COMPANY, a California corporation.
By:  Matthew W. Scobee Senior Vice President	By:  Mike Marelli Director, Contract Origination and Analysis
Date: <u>2/22/10</u>	Date: <u>2/24/10</u>

The contents of this document are subject to restrictions on disclosure as set forth in the Agreement.

Amendment No. 2 to Renewable Power Purchase and Sale Agreement

AMENDMENT NO. 3

To The

RENEWABLE POWER PURCHASE AND SALE AGREEMENT

Between

SOUTHERN CALIFORNIA EDISON COMPANY

And

TERRA-GEN 251 WIND, LLC

RAP ID #6310

This Amendment No. 3 ("Amendment No. 3") to the Agreement (as that term is defined below) is entered into between Southern California Edison Company, a California corporation ("SCE"), and Terra-Gen 251 Wind, LLC, a Delaware limited liability company (as successor in interest to Caithness 251 Wind, LLC, "Seller"). SCE and Seller are hereinafter sometimes referred to individually as a "Party" and jointly as the "Parties". Capitalized terms used and not otherwise defined in this Amendment No. 3 shall have the meanings ascribed to such terms in the Agreement.

RECITALS

The Parties enter into this Amendment No. 3 with reference to the following facts:

- A. SCE and Seller are Parties to that certain Renewable Power Purchase and Sale Agreement, dated as of November 15, 2006 (as amended from time to time, the "Agreement"), under which, among other things, Seller will sell to SCE, and SCE will purchase from Seller, Product upon commencement of the Term.
- B. Pursuant to Section 2.04(a)(v)(a) of the Agreement, on August 27, 2009, Seller provided Notice to SCE that the Current Turbine Costs exceed 105% of the Estimated Turbine Costs. Seller also provided a report from a Turbine Cost Expert verifying such claim.
- C. Pursuant to Section 2.04(a)(v)(c), the Parties are to negotiate a new Energy Price. Under Section 2.04(a)(v), if the Parties are not able to agree upon a new Energy Price within two hundred ten (210) days of Seller's Notice pursuant to Section 2.04(a)(v)(a) (i.e. March 26, 2010), either Party shall have the right to terminate the Agreement by providing a Notice of termination on or before two hundred forty (240) days from Seller's Notice provided under Section 2.04(a)(v)(a) (i.e. April 25, 2010).

The contents of this document are subject to restrictions on disclosure as set forth in the Agreement.

- D. As of the effective date of this Amendment No. 3 (as set forth below), the Parties have not reached agreement on a new Energy Price.
- E. The Parties now wish to amend the Agreement to provide for a further extension of the Parties' rights to terminate the Agreement in the event that they are unable to reach an agreement on a new Energy Price, as set forth herein.

AGREEMENT

In consideration of the promises, mutual covenants and agreements hereinafter set forth, and for other good and valuable consideration, as set forth herein, the Parties agree to amend the Agreement as follows:

1. AMENDMENT

- (a) Section 2.04(a)(v) is amended to replace the words "two hundred forty (240) after receipt of Seller's Notice" with "April 30, 2010" in the first sentence thereof.

2. MISCELLANEOUS

- (a) Reservation of Rights. Each of the Parties expressly reserves all of its respective rights and remedies under the Agreement.
- (b) Legal Effect. Except as expressly modified as set forth herein, the Agreement remains unchanged and, as so modified, the Agreement shall remain in full force and effect.
- (c) Governing Law. THIS AMENDMENT NO. 3 AND THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED, ENFORCED AND PERFORMED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW. TO THE EXTENT ENFORCEABLE AT SUCH TIME, EACH PARTY WAIVES ITS RESPECTIVE RIGHT TO ANY JURY TRIAL WITH RESPECT TO ANY LITIGATION ARISING UNDER OR IN CONNECTION WITH THIS AMENDMENT NO. 3.
- (d) Successors and Assigns. This Amendment No. 3 shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns.
- (e) Authorized Signatures; Notices. Each Party represents and warrants that the person who signs below on behalf of that Party has authority to execute this Amendment No. 3 on behalf of such Party and to bind such Party to this

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Amendment No. 3 to Renewable Power Purchase and Sale Agreement

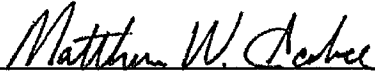
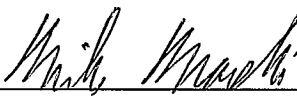
Amendment No. 3. Any written notice required to be given under the terms of this Amendment No. 3 shall be given in accordance with the terms of the Agreement.

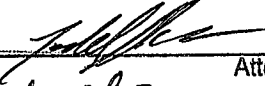
- (f) Effective Date. This Amendment No. 3 shall be deemed effective as of the date upon which the last Party executes this Amendment No. 3.
- (g) Further Agreements. This Amendment No. 3 shall not be amended, changed, modified, abrogated or superseded by a subsequent agreement unless such subsequent agreement is in the form of a written instrument signed by the Parties.
- (h) Counterparts; Electronic Signatures. This Amendment No. 3 may be executed in one or more counterparts, each of which will be deemed to be an original of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement. The exchange of copies of this Amendment No. 3 and of signature pages by facsimile transmission, Portable Document Format (i.e., PDF), or by other electronic means shall constitute effective execution and delivery of this Amendment No. 3 as to the Parties and may be used in lieu of the original Amendment No. 3 for all purposes.

[Remainder of Page Left Intentionally Blank.]

RAP ID #6310, Caithness 251 Wind, LLC

IN WITNESS WHEREOF, the Parties hereto have caused this Amendment No. 3 to be executed by their duly authorized representatives on the dates indicated below their respective signatures.

TERRA-GEN 251 WIND, LLC, a Delaware limited liability company.	SOUTHERN CALIFORNIA EDISON COMPANY, a California corporation.
By:  Matthew W. Scobee Senior Vice President	By:  Mike Marelli Director, Contract Origination and Analysis
Date: <u>4/20/10</u>	Date: <u>4/21/10</u>

APPROVED
STEPHEN E. PICKETT
Sr. Vice President and
General Counsel
BY  Attorney
April 20 20 10

The contents of this document are subject to restrictions on disclosure as set forth in the Agreement.

Amendment No. 3 to Renewable Power Purchase and Sale Agreement