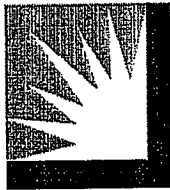


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*Execution Copy*

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**SOUTHERN CALIFORNIA  
EDISON**

An *EDISON INTERNATIONAL* Company

**AMENDED AND RESTATED**

**RENEWABLE POWER PURCHASE AND SALE AGREEMENT**

**between**

**SOUTHERN CALIFORNIA EDISON COMPANY**

**and**

**DILLON WIND LLC**

**(QFID #6305)**

*The contents of this document are subject to a Non-Disclosure Agreement and shall not be disclosed.*

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# Southern California Edison

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*QFID# 6305, Dillon Wind LLC*

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- A. GENERATING FACILITY AND SITE DESCRIPTION
- B. NOTICE LIST
- C. SCHEDULING REQUIREMENTS AND PROCEDURES FOR WIND POWER GENERATING FACILITIES
- D. PAYMENT ADJUSTMENTS FOR SCHEDULING DEVIATIONS BY SELLER
- E. ENERGY REPLACEMENT DAMAGE AMOUNT
- F. SELLER'S MILESTONE SCHEDULE
- G. MILESTONE PROGRESS REPORTING FORM
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- I. NON-DISCLOSURE AGREEMENT
- J. TIME OF DELIVERY PERIODS AND ENERGY PAYMENT ALLOCATION FACTORS
- K. PROCEDURE FOR PARTIAL OR FULL RETURN OF DEVELOPMENT FEE
- L. SELLER'S ESTIMATE OF LOST OUTPUT
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- N. [THIS EXHIBIT INTENTIONALLY LEFT BLANK]
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- P. CALCULATION OF PTC *BEFORE*-TAX BENEFIT
- Q. DESCRIPTION OF WEST OF DEVERS TRANSMISSION UPGRADES
- R. DEFINITION OF WIND TURBINE AVAILABILITY

**AMENDED AND RESTATED  
RENEWABLE POWER PURCHASE AND SALE AGREEMENT**

**between**

**SOUTHERN CALIFORNIA EDISON COMPANY**

**and**

**DILLON WIND LLC**

**(QFID #6305)**

This Amended and Restated 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: August 16, 2006 ("Effective Date").

This Agreement is entered into between:

- (a) **Southern California Edison Company** ("SCE"), a California corporation, whose principal place of business is at 2244 Walnut Grove Avenue, Rosemead, California 91770, and
- (b) **Dillon Wind LLC** ("Seller"), an Oregon limited liability company, whose principal place of business is at 1125 NW Couch Street, Suite 700, Portland, Oregon 97209.

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

Pursuant to that certain PPA Assignment dated July 31, 2006, as confirmed in a Consent Agreement between SCE and PPM Energy, Inc., dated July 28, 2006, Seller has assumed all rights and obligations of PPM Energy, Inc., under that certain Renewable Power Purchase and Sale Agreement between PPM Energy, Inc. and SCE dated August 31, 2005 (the "Original PPA"). This Agreement amends, restates and replaces the Original PPA.

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Seller is willing to construct, own, and Operate an electric energy Generating Facility which qualifies as of the Effective Date as an eligible renewable energy resource under the State of California Renewable Portfolio Standard Program as codified at California Public Utilities Code Section 399.11, *et seq.*, and to sell all electric energy produced by the Generating Facility together with all Environmental Attributes, Capacity Attributes and Resource Adequacy Benefits to SCE; and SCE is willing to purchase all electric energy delivered by Seller to SCE generated by such facility together with all Environmental Attributes, Capacity Attributes and Resource Adequacy Benefits pursuant to the terms and conditions set forth herein.

Capitalized terms in this Agreement have the meanings set forth in Article One.



**SPECIAL CONDITIONS**

**A. Generating Facility.**

- (i) Name: **Dillon I Wind Project.**
- (ii) Location of Site: **Riverside County, California**, as further described in Exhibit A.
- (iii) Eligible Renewable Resource Type: **Wind Generating Facility.**
- (iv) Nameplate Contract Capacity shall be equal to **45 MW**, subject to adjustment as set forth below:
  - (a) Seller shall have the right to reduce the Nameplate Contract Capacity (the "Reduction Option") by up to **15 MW** (the "Reduction"), for a potential minimum Generating Facility size of **30 MW**. Seller may exercise the Reduction Option in phases. Upon any exercise of the Reduction Option:
    - (1) Seller must, on or before the Final Configuration Date, provide:
      - (i) A Notice to SCE of Seller's Reduction election, including a specification of the size of the Reduction and the total Nameplate Contract Capacity, in MW, which Seller elects to develop;
      - (ii) A revised Exhibit A describing the Generating Facility and turbine locations, including the Reduction; and
      - (iii) A revised Milestone Schedule in the form of Exhibit F including the Reduction; and
    - (2) SCE shall, within twenty (20) days of Seller's notice of such Reduction, return to Seller the portion of the Development Fee associated with the Reduction (or, if the Development Fee is covered by a Development Fee Guaranty Agreement, acknowledge by Notice to Seller and Seller's Guarantor that the amount of the Development Fee has been reduced).
  - (b) The Nameplate Contract Capacity may be subject to reduction as set forth in Section 3.04(d);
  - (c) Seller shall have the right to reduce the Nameplate Contract Capacity by Notice to SCE to the extent that:

- (1) The CPUC issues a CPUC Section 851 Approval; and
- (2) Seller reasonably determines that the terms or conditions of the CPUC Section 851 Approval make it commercially impracticable for Seller to install a Generating Facility with a Nameplate Contract Capacity on the Site at least equal to the Nameplate Contract Capacity previously determined under any provision of this Special Condition A(iv).

Seller shall give SCE Notice of any such reduction no later than thirty (30) days after CPUC Section 851 Approval. SCE shall within twenty (20) days of Seller's Notice return to Seller the portion of the Development Fee associated with the reduction (or, if the Development Fee is covered by a Development Fee Guaranty Agreement, acknowledge by Notice to Seller and Seller's Guarantor that the amount of the Development Fee has been reduced).

- (v) **Expected Annual Net Energy Production:**

The Expected Annual Net Energy Production for each Term Year shall be the value calculated in accordance with the following formula:

**EXPECTED ANNUAL NET ENERGY PRODUCTION**

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

Where A = Nameplate Contract Capacity at the beginning of the Term Year for which the Expected Annual Net Energy Production is being determined, in MW.

B = 33.5%.

C = 8,760 hours per year for non-leap years, or 8,784 hours for leap years.

**B. Startup Deadline.**

The Startup Deadline shall be **December 31, 2007**, or such other date as provided in this Agreement or as may be agreed to in a writing signed by both Parties.

**C. 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 **twenty (20) years** from the month of the Firm Operation Date.

**D. Energy Price.**

*The contents of this document are subject to a Non-Disclosure Agreement and shall not be disclosed.*

The Energy Price shall be \$60.35 per MWh escalating at 2% annually, with the first such 2% escalation to occur on the first day of the calendar month after the first anniversary of the commencement of the Term, and at the end of each twelve (12) month period thereafter.

**E. Performance Assurance Amount.**

One hundred fifty thousand dollars (\$150,000) per MW of Nameplate Contract Capacity.

**F. Seller's Guarantor.**

Scottish Power Finance (US), Inc., or a successor or assignee of Scottish Power Finance (US), Inc., that:

- (i) Seller designates by Notice to SCE;
- (ii) Is reasonably acceptable to SCE (*provided, however*, that any Affiliate of Scottish Power Finance (US), Inc., including PPM Energy, Inc., shall be deemed acceptable to SCE as long as it satisfies the requirements of Section 8.02(c));
- (iii) Satisfies the requirements of Section 8.02(c); and
- (iv) Delivers to SCE a Guaranty Agreement substantially in the form of Exhibit H as replacement Performance Assurance.

**G. ISO Change Cost Threshold Amount.**

The ISO Change Cost Threshold Amount for each Term Quarter, or Term Year if applicable, shall be the value calculated in accordance with the following formula:

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

Where A = Total Energy Payments due or expected to be due for the Scheduled Amounts from the Generating Facility in the Term Quarter, or Term Year if applicable.

B = Two percent (2%).

---

\*\*\* End of Special Conditions \*\*\*

**ARTICLE ONE. DEFINITIONS**

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

- 1.01 "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.
- 1.02 "Agreement" has the meaning set forth in the Preamble.
- 1.03 "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.
- 1.04 "Annual True-Up" has the meaning set forth in Section 11.03(d).
- 1.05 "Arbitrator" has the meaning set forth in Article Twelve.
- 1.06 "Areas 1, 3 and 5" means the areas identified as such in Exhibits A, A-1, A-2, and A-3.
- 1.07 "Bankrupt" means, with respect to any entity, that 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.
- 1.08 "Business Day" means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday. 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.

- 1.09 "Capacity Attributes" means any current or future defined characteristic, certificate, tag, credit, ancillary service attribute, including any accounting construct used to account therefore, such as an accounting construct used in counting toward resource adequacy requirement, associated with the Generating Facility or any unit of generating capacity of the Generating Facility during the Term. An example of a Capacity Attribute would be an "ACAP" credit, or "Available Capacity" credit as defined in the ISO's Market Design '02 Proposal or any subsequent ISO Tariff incorporating such similar terms.
- 1.10 "CEC" means the California Energy Commission.
- 1.11 "CEC Certification" means that the CEC has certified (or, with respect to periods before the Generating Facility is on line, 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; *provided, however*, that if Seller is unable to obtain CEC Certification for the Generating Facility due to (i) a change in the RPS Legislation occurring after the Effective Date, or (ii) a change in other Applicable Laws occurring after the Effective Date that directly impacts CEC Certification, the Generating Facility shall be deemed to have CEC Certification as long as (a) the Generating Facility would have qualified for CEC Certification under the RPS Legislation in effect on the Effective Date, and (b) Seller is using commercially reasonable efforts under Section 3.16 to obtain or maintain CEC Certification.
- 1.12 "CEQA" means the California Environmental Quality Act, as it may be amended from time to time.
- 1.13 "Change in ISO Tariff" means that the ISO Tariff has been changed and such change has a material 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.
- 1.14 "Claiming Party" has the meaning set forth in Section 5.02.
- 1.15 "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.
- 1.16 "Conditional Use Permit" has the meaning set forth in Section 2.02(c)(i).
- 1.17 "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.

- 1.18 "Costs" means, with respect to the Non-Defaulting Party, brokerage fees, commissions, legal expenses and other similar third party transaction costs and expenses reasonably incurred by the Non-Defaulting Party in entering into any new arrangement which replaces this Agreement.
- 1.19 "CPUC" means the California Public Utilities Commission.
- 1.20 "CPUC Approval" means that the CPUC has issued a final decision, no longer subject to appeal, without conditions or modifications unacceptable to either Party, that:
- (a) Approves as reasonable all aspects of the solicitation for renewable power which resulted in this Agreement and of SCE's conduct with respect to the solicitation;
  - (b) Finds that any electric energy sold or dedicated to SCE pursuant to this Agreement (hereinafter, "Agreement Procurement") counts, in full and without condition, toward any annual procurement target and/or one or more incremental procurement targets established by the RPS Legislation or the CPUC which is/are applicable to SCE;
  - (c) Finds that all Agreement Procurement counts, in full and without condition, toward the requirement in the RPS Legislation that SCE procure 20% (or such other percentage as may be established by law) of its retail sales from ERRs by 2017 (or such other date as may be established by law); and
  - (d) Finds that this Agreement, and SCE's entry into this Agreement is reasonable and prudent for all purposes, including, but not limited to, recovery in rates of payments made pursuant to this Agreement, subject only to further review with respect to the reasonableness of SCE's administration of this Agreement.

CPUC Approval will be deemed to have occurred on the date that a CPUC decision containing the above findings becomes final and non-appealable.

- 1.21 "CPUC Section 851 Approval" means that the CPUC has issued a final decision, no longer subject to appeal, that approves and authorizes SCE to grant the Option Agreement to Seller.
- 1.22 "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.

- 1.23 "Daily Delay Liquidated Damages" has the meaning set forth in Section 3.04(b).
- 1.24 "Defaulting Party" has the meaning set forth in Section 6.01.
- 1.25 "Delivered Amounts" means the Metered Amounts less Delivery Losses.
- 1.26 "Delivery Losses" means all electrical losses in the electrical transmission system occurring after the ISO Approved Meter 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 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 assigned to the Generating Facility.
- 1.27 "Delivery Point" means ISO Zone SP-15. Notwithstanding anything to the contrary in Section 11.01, 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:
- (a) The SCE load aggregation point, if defined by the ISO; or
  - (b) 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.
- 1.28 "Demonstrated Nameplate Contract Capacity" has the meaning set forth in Section 3.04(d).
- 1.29 "Development Fee" means the fee described in Section 3.04(a).
- 1.30 "Development Fee Guaranty Agreement" means the Guaranty Agreement described in Section 3.04(a).
- 1.31 "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.

- 1.32 "Early Termination Date" has the meaning set forth in Section 6.02(a).
- 1.33 "Effective Date" has the meaning set forth in the Preamble.
- 1.34 "Energy Payment" has the meaning set forth in Section 4.02(b).
- 1.35 "Energy Payment Allocation Factor" has the meaning set forth in Exhibit J.
- 1.36 "Energy Price" means the energy price set forth in Special Condition D.
- 1.37 "Energy Replacement Damage Amount" has the meaning set forth in Section 3.05(b).
- 1.38 "Environmental Attributes" mean any and all current or future credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributed to or associated with the Generating Facility and any electric energy produced therewith during the Term. 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<sub>x</sub>), nitrogen oxides (NO<sub>x</sub>), carbon monoxide (CO) and other pollutants;
  - (b) Any avoided emissions of carbon dioxide (CO<sub>2</sub>), methane (CH<sub>4</sub>) 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 Change, to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere;
  - (c) The reporting rights, such as, but not limited to, Green Tag Reporting Rights, to these avoided emissions. "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.



Environmental Attributes, Capacity Attributes and Resource Adequacy Benefits do not include:

- (w) 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; or
  - (x) Fuel-related subsidies or tipping fees that may be paid to Seller to accept certain fuels, or local subsidies received by the Seller for the destruction of particular pre-existing pollutants or the promotion of local environmental benefits; or
  - (y) Any subsidies or awards paid by the CEC; or
  - (z) Any other state, federal or private payments or grants relating in any way to the Generating Facility or the Generating Facility's output.
- 1.39 "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.
- 1.40 "ERR" means a generating facility that qualifies as an eligible renewable energy resource for purposes of the RPS Legislation.
- 1.41 "Event of Default" has the meaning set forth in Section 6.01.
- 1.42 "Event of Deficient Energy Deliveries" has the meaning set forth in Section 3.05(a)(ii).
- 1.43 "Example" means an example set forth in an exhibit to this Agreement. Each Example is for purposes of illustration only and is not intended to constitute a representation, warranty or covenant concerning the matters assumed for purposes of each Example. If there is a conflict between an Example and the text of this Agreement, the text shall control.
- 1.44 "Expected Annual Net Energy Production" means the Generating Facility's expected annual Metered Amounts as set forth in Special Condition A(v).
- 1.45 "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 five (5) consecutive days during which Seller was prepared and able to Schedule at the Delivery Point.

- 1.46 "Federal Production Tax Credit Legislation" means validly enacted Federal legislation extending the applicability and rate of the renewable energy production tax credit (26 U.S.C. § 45) to owners of generating facilities which use wind to produce electric energy which are placed in service on or before December 31, 2009, or such other date as may be agreed to in a writing signed by both Parties, 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, 2004 and before January 1, 2008 pursuant to the law governing federal Production Tax Credits as in effect on the Effective Date including, but not limited to, a tax credit allowable for at least ten years of at least \$18.00 per MWh in 2004 dollars adjusted for inflation as set forth therein.
- 1.47 "FERC" means the Federal Energy Regulatory Commission.
- 1.48 "Final Configuration Date" means the date that is the later of:
- (a) Twelve (12) months after the Wind Lease Development Period Commencement Date;
  - (b) Ninety (90) days after CPUC Section 851 Approval; or
- 1.49 "Firm Operation Date" means the last day of the calendar month which is:
- (a) Six (6) months after the date of Initial Operation plus any additional days for Force Majeure as provided in Section 5.04; or
  - (b) A date agreed to in a writing signed by both Parties.
- 1.50 "Force Majeure" means any occurrence that was not anticipated as of the Effective Date:
- (a) That, in whole or in part, delays a Party's performance under this Agreement, causes a Party to be unable to perform its obligations, or prevents a Party from complying with or satisfying the conditions of this Agreement;
  - (b) That is not within the control of that Party; and
  - (c) That 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.

None of the following shall constitute a Force Majeure under this Agreement:

- (x) The lack of wind, sun or other fuel source of an inherently intermittent nature; nor
- (y) Curtailment or reduction in deliveries at the direction of a Transmission Provider or the ISO, provided that 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 repairs.

- 1.51 "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 an amount owing to the Defaulting Party, *provided that* if the Non-Defaulting Party's Gains exceed its Costs and Losses and the Notice of Early Termination Date given by the Non-Defaulting Party arises from an Event of Default by the Defaulting Party under Section 6.01, then the Forward Settlement Amount shall be zero dollars (\$0).

The Forward Settlement Amount shall not include consequential, punitive, exemplary, indirect or business interruption damages by statute, in tort or contract, under any indemnity provision or otherwise.

- 1.52 "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, any new agreement that replaces this Agreement and reference to information supplied by one or more third parties, which shall exclude Affiliates of the Non-Defaulting Party, including 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.

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.

- 1.53 “Generating Facility” means any Wind Turbines installed at the Site, including those described in Exhibit A, 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.
- 1.54 “Generating Facility Availability” means the simple average of the sum of the “Wind Turbine Availability” for each Wind Turbine included in Nameplate Contract Capacity, as calculated for the period in question in accordance with Exhibit R.
- 1.55 “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.
- 1.56 “Generating Facility Power Curve” means a table used to estimate the Generating Facility’s Metered Amounts as a function of the recorded wind speed at the Site as described in Exhibit L.
- 1.57 “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, 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.
- 1.58 “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.
- 1.59 “Governmental Charges” has the meaning as set forth in Section 9.02.

- 1.60 "Guarantor" has the meaning set forth in Special Condition F.
- 1.61 "Guaranty Agreement" means a guaranty agreement from the Guarantor in the form attached hereto as Exhibit H.
- 1.62 "Initial Operation" means the date selected by Seller in accordance with Section 2.03(b).
- 1.63 "Institutional Investor" means, collectively, any investor or investors who acquire a direct or indirect interest in Seller as part of a transaction to ensure that the Generating Facility is owned at least partly by an entity that can use the tax subsidies the federal government offers to encourage production of electricity from wind farms (including any transferees of such investors).
- 1.64 "Institutional Investor Agreement" has the meaning set forth in Section 6.05.
- 1.65 "Interconnection Agreement" means that certain interconnection agreement dated December 6, 2000 for the Wintec VI Power Project between Wintec Energy, Ltd., and SCE, which Wintec Energy, Ltd., is to assign to Seller at the closing of the Wintec Agreement.
- 1.66 "Interconnection Facilities" have the meaning attributed to such term in the Interconnection Agreement.
- 1.67 "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.*
- 1.68 "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.
- 1.69 "ISO Approved Meter" has the meaning set forth in Section 3.06.

- 1.70 "ISO Change Cost" has the meaning set forth in Section 11.02(a).
- 1.71 "ISO Change Cost Payment" means a payment, either from SCE to Seller or from Seller to SCE, due to an ISO Change Cost as described in Section 11.02(b).
- 1.72 "ISO Change Cost Threshold Amount" means the threshold amount in Special Condition G at the time any ISO Change Cost Payment is calculated pursuant to Exhibit M.
- 1.73 "ISO Grid" means the system of transmission lines and associated facilities of the participating transmission owners that have been placed under the ISO's operational control.
- 1.74 "ISO PIRP Charges" means those ISO charges under the Participating Intermittent Resource Program identified as charge types 701, 702, 711, 721 and 731(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.
- 1.75 "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.
- 1.76 "Lease" means one or more agreements whereby Seller leases the Site(s) described in Special Condition A(ii) from SCE under the Wind Lease or from a third party if the Site consists of more land than as described in the Wind Lease, 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.
- 1.77 "Lender" means any financial institution(s) that provide(s) development, bridge, construction, permanent debt or tax equity financing or refinancing for the Generating Facility to Seller or an Affiliate of Seller.
- 1.78 "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 or "A3" from Moody's, in a form proposed by Seller and reasonably acceptable to SCE (which acceptance shall not be unreasonably withheld, conditioned or delayed). All Letter of Credit costs shall be borne by Seller.
- 1.79 "Letter of Credit Default" means with respect to a Letter of Credit, the occurrence of any of the following events:

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- (a) The issuer of such Letter of Credit fails to maintain a Credit Rating of at least "A-" by S&P or "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 expires or terminates, or fails or ceases to be in full force and effect at any time;
- (e) Seller fails to provide to SCE either a substitute Letter of Credit or alternative Performance Assurance acceptable to SCE, in each case on or before thirty (30) days prior to the expiration of such Letter of Credit; or
- (f) The issuer of such Letter of Credit becomes Bankrupt;

provided, however, 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; and provided further that Seller shall have no duty to replenish, replace or reinstate the Letter of Credit to the extent monetary proceeds of such Letter of Credit are paid to SCE except to the extent that SCE is required to return any or all of such proceeds due to bankruptcy or insolvency laws or otherwise, in which case Seller shall be obligated to replace or reinstate the Letter of Credit to such extent.

- 1.80 "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, any new agreement that replaces this Agreement and reference to information supplied by one or more third parties, which shall exclude Affiliates of the Non-Defaulting Party, including 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.

The Non-Defaulting Party shall use commercially reasonable efforts to mitigate its Losses.

- 1.81 “Lost Output” means the Metered Amounts, measured in MWh, that the Generating Facility was available to produce and could reasonably have been expected to produce and Schedule over the relevant measurement period, based upon historical performance and/or actual operating conditions, but was not produced, Scheduled or delivered due to:
- (a) Force Majeure;
  - (b) An Event of Default where SCE is the Defaulting Party; or
  - (c) A curtailment or reduction of deliveries ordered or caused by the ISO, or SCE acting as a Transmission Provider (including without limitation a curtailment or reduction that does not constitute a Force Majeure as provided in subparagraph (y) of the definition of Force Majeure and a curtailment or reduction that arises from the West of Devers Transmission Upgrades or any other transmission upgrades).
- 1.82 “Lost Output Report” means the report of Lost Output prepared in accordance with the procedures set forth in Section 3.18 and Exhibit L.
- 1.83 “Market Price” means simple average for each hour of the ISO Ex Post Prices for each ISO settlement interval within the hour 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, that 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.
- 1.84 “Metered Amounts” means the electric energy produced by the Generating Facility having CEC Certification under this Agreement and expressed in MWh, as measured by the ISO Approved Meter.
- 1.85 “Milestone Schedule” means the Seller’s schedule to develop the Generating Facility as set forth in Exhibit F, including any revisions thereto.



- 1.86 "Moody's" means Moody's Investor Services, Inc.
- 1.87 "MW" means a megawatt of electric energy generating capacity.
- 1.88 "MWh" means a megawatt-hour of electric energy.
- 1.89 "Nameplate Contract Capacity" means the electrical generating capacity that Seller commits to install at the Site as set forth in Special Condition A(iv), with such Nameplate Contract Capacity subject to reduction as set forth in Section 3.04(d).
- 1.90 "NDA" has the meaning set forth in Section 10.08.
- 1.91 "Non-Defaulting Party" has the meaning set forth in Section 6.02.
- 1.92 "Notice" means notices, requests, statements or payments provided in accordance with Section 10.06 and Exhibit B.
- 1.93 "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.
- 1.94 "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.
- 1.95 "Option Agreement" means that certain Option Agreement dated as of the date hereof between SCE and Seller.
- 1.96 "Original PSA" has the meaning set forth in the preamble.
- 1.97 "Original PSA Deposit" has the meaning set forth in Section 3.04(g).
- 1.98 "Participating Intermittent Resource" means an intermittent resource generating facility that is certified, and remains certified, under PIRP as set forth in the ISO Tariff.
- 1.99 "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 to that program.
- 1.100 "Party" or "Parties" have the meaning set forth in the Preamble.

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- 1.101 "Performance Assurance" means collateral in the amount set forth in Special Condition E for Seller's performance during the Term in the form of either cash, a guaranty, or a Letter of Credit.
- 1.102 "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.
- 1.103 "Production Tax Credits" or "PTC" mean:
- (a) Production tax credits under Section 45 of the Internal Revenue Code as in effect from time-to-time during the Term 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; and
  - (b) Any production tax credits available under state law as of the Effective Date for which the Generating Facility is eligible.
- 1.104 "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 requirements of Governmental Authorities, California electric utility standards, WECC standards, the ISO and Applicable Laws.
- 1.105 "PTC *Before-Tax* Benefit" means the economic benefit to Seller (or, as appropriate to a payment for Lost Output related to West of Devers Transmission Upgrades under Section 4.02(d) or a determination of the ISO Change Cost, which would have been realized by Seller), of Production Tax Credits on a *before-tax* basis rate calculated in accordance with Exhibit P.
- 1.106 "Reduction" has the meaning set forth in Special Condition A
- 1.107 "Reduction Option" has the meaning set forth in Special Condition A.

The contents of this document are subject to a Non-Disclosure Agreement and shall not be disclosed.

- 1.108 "Resource Adequacy Benefits" means the rights and privileges attached to any generating resource that satisfy any entity's resource adequacy obligations, as those obligations are set forth in any Resource Adequacy Rulings, to the extent attributed to or associated with the Generating Facility and any electric energy produced therewith during the Term.
- 1.109 "Resource Adequacy Rulings" means CPUC Decisions 04-01-050, 04-10-035 and any subsequent CPUC ruling or decision, 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.
- 1.110 "RPS Legislation" means the State of California Renewable Portfolio Standard Program, as codified at California Public Utilities Code Section 399.11, *et seq.*, and any rules, interpretations, CPUC decisions or other decisions by Governmental Authorities with respect thereto.
- 1.111 "S&P" means the Standard & Poor's Rating Group.
- 1.112 "SCE" has the meaning set forth in the Preamble.
- 1.113 "SCE Mitigation Rights" has the meaning set forth in Section 11.04.
- 1.114 "Schedule," "Scheduled" or "Scheduling" means the action of Seller or SCE (if SCE is acting as Scheduling Coordinator pursuant to Section 11.04), or such Party's designated representatives, including any third party provider of scheduling services, if applicable, of notifying, requesting, and confirming to each other or to the ISO, as appropriate, the "ISO Approved Quantity" of electric energy from the Generating Facility being delivered by Seller to SCE in the form of Scheduling Coordinator Trades for any given day, hour, or relevant period at the Delivery Point, all in accordance with the provisions of Section 3.03. The "ISO Approved Quantity" of electric energy means the quantity of Seller's Scheduling Coordinator's schedule request as approved by the ISO in its final schedule published in accordance with the ISO Tariff.
- 1.115 "Scheduled Amounts" means the Scheduled quantity, expressed in whole or partial MWs, of electric energy in the form of Scheduling Coordinator Trades confirmed to SCE on any given day, hour, or relevant period at the Delivery Point.
- 1.116 "Scheduling Coordinator" or "SC" means an 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. Except as provided in Section 11.04(a)(ii), Seller may, in its sole discretion:
- (a) Engage a third party to act as its Scheduling Coordinator;

- (b) Act as its own Scheduling Coordinator; or
  - (c) Designate an Affiliate to serve as its Scheduling Coordinator.
- 1.117 "Scheduling Coordinator Trades" means Scheduling Coordinator to Scheduling Coordinator trades of electric energy by the Party responsible for Scheduling Scheduled Amounts to SCE in accordance with the ISO Tariff.
- 1.118 "Section 203 Approval" has the meaning set forth in Section 2.02(b)(ii).
- 1.119 "Security Interest" has the meaning set forth in Section 8.03.
- 1.120 "Selected Date" has the meaning set forth in Section 2.03(b).
- 1.121 "Seller" has the meaning set forth in the Preamble.
- 1.122 "Seller's Actual Revenue" means the total of payments received by Seller pursuant to Article Four, excluding any payment adjustments pursuant to Section 4.02(c), plus any PTC *Before-Tax* Benefit.
- 1.123 "Seller's Energy Delivery Obligation" has the meaning set forth in Section 3.05(a)(i).
- 1.124 "Settlement Interval" means any TOD Period as measured in total hours in the TOD Period during the month.
- 1.125 "Site" means the real property on which the Generating Facility is, or will be located, as further described in Special Condition A(ii) and Exhibit A or as adjusted in accordance with Section 3.08.
- 1.126 "Site Control" means that Seller satisfies the criteria of Section 3.07(a).
- 1.127 "Startup Deadline" means the date as set forth in Special Condition B by which Seller must have commenced Initial Operation as set forth in Section 2.03(b), subject to extension as provided in this Agreement.
- 1.128 "Station Use" means electric energy produced by the Generating Facility that is used to power the auxiliary equipment required to Operate the Generating Facility including, but not limited to, rotating motors, lubricating oil systems, plant lighting, and control systems.
- 1.129 "Term" has the meaning used in Special Condition C.
- 1.130 "Term Quarter" means, as applicable, the three month period beginning on the first day of the calendar month following the Firm Operation Date and each successive three month period thereafter.

- 1.131 "Term Year" means a twelve (12) month period beginning on the first day of the calendar month following the Firm Operation Date and each successive twelve (12) month period thereafter.
- 1.132 "Termination Payment" has the meaning set forth in Section 6.03.
- 1.133 "TOD Period(s)" means the time of delivery period(s) set forth in Exhibit J.
- 1.134 "TOD Period Energy Payment" has the meaning set forth in Section 4.02(b).
- 1.135 "Transmission Provider" means any entity or entities responsible for the interconnection of the Generating Facility with the ISO Grid or transmitting the Metered Amounts on behalf of Seller from the Generating Facility to the Delivery Point.
- 1.136 "Unincluded Capacity" has the meaning set forth in Section 3.04(d).
- 1.137 "Uninstructed Imbalance Energy" has the meaning set forth in Appendix A of the ISO Tariff.
- 1.138 "Warranty" means the Seller's warranty on the availability of the Wind Turbines meeting the following requirements:
- (a) A Warranty Period of five (5) years beginning on the Firm Operation Date;
  - (b) A Generating Facility Availability of a minimum of ninety percent (90%) for each Term Year of the Warranty Period;
  - (c) Generating Facility Availability calculated in a manner consistent with the definition of "Generating Facility Availability" and otherwise in accordance with industry standards;
  - (d) The measurement period of a Term Year for determining if the Warranty Availability Guarantee has been satisfied and for determining any Warranty Availability Lost Production Payment;
  - (e) An obligation to promptly pay a Warranty Availability Lost Production Payment for all MWh which Seller is unable to deliver to SCE during any Term Year of the Warranty Period as a result of any failure by the Generating Facility to meet the Warranty Availability Guarantee.
- 1.139 "Warranty Availability Guarantee" means the guaranteed Generating Facility Availability as set forth in the Warranty.
- 1.140 "Warranty Availability Lost Production" means, if in any Term Year the Generating Facility Availability is less than the Warranty Availability Guarantee during the

period in question, the amount of electric energy (in MWh) calculated by multiplying the value of "A" set forth below times the value of "B" set forth below:

- (a) The value of "A" shall be the value derived by dividing:
  - (i) The electric energy produced by the Generating Facility as measured by the ISO Approved Meter, less Station Use if separately metered, plus any Lost Output during the applicable period; by
  - (ii) The Generating Facility Availability during the applicable period.
- (b) The value of "B" shall be the value derived by subtracting:
  - (i) The Generating Facility Availability during the applicable period; from
  - (ii) The Warranty Availability Guarantee.

Notwithstanding the foregoing, if the Metered Amounts plus any Lost Output in the period in question exceeded the cumulative Expected Annual Net Energy Production for that period, the Warranty Availability Lost Production for that period shall be zero.

- 1.141 "Warranty Availability Lost Production Payment" means liquidated damages calculated in accordance with Exhibit O and payable to SCE pursuant to Section 3.15 in respect to the Generating Facility's failure to achieve the Warranty Availability Guarantee in any Term Year.
- 1.142 "Warranty Period" means the period during which the Warranty Availability Guarantee applies as set forth in the Warranty.
- 1.143 "WECC" means the Western Electricity Coordinating Council, the regional reliability council for the Western United States and Canada.
- 1.144 "West of Devers Transmission Upgrades" means the construction of the SCE transmission upgrades described in Exhibit Q. To assist Seller in evaluating the effect of the West of Devers Transmission Upgrades and the operation of Section 4.02(d), SCE shall, at Seller's request, provide to Seller publicly available information about SCE's West of Devers Transmission Upgrades and any other transmission upgrades that would affect Generating Facility operations and shall cooperate with Seller's efforts to obtain transmission flow data from the ISO.
- 1.145 "Wind Lease" means that certain Wind Energy Lease Agreement dated as of the date hereof between SCE, as landowner, and Seller, as lessee.

- 1.146 "Wind Lease Development Period Commencement Date" means the date on which the Wind Lease is executed.
- 1.147 "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.
- 1.148 "Wind Turbine Availability" means the value calculated in accordance with Exhibit R.
- 1.149 "Wintec Agreement" means that certain Asset Purchase Agreement between Wintec Energy, Ltd., and Seller.
- 1.150 "Workbook" has the meaning set forth in Exhibit L.
- 1.151 "WREGIS" means the Western Renewable Energy Generation Information System or its successor.

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

**ARTICLE TWO. TERM AND CONDITIONS PRECEDENT; TERMINATION****2.01 Effective Date and Term.**

This Agreement shall become effective on the Effective Date.

**2.02 Obligations Prior to Commencement of Term.****(a) CPUC Filing and Approval of this Agreement.**

Within fifteen (15) 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 disapproves the Agreement or fails to contain findings required for CPUC Approval.

**(b) Filing and Approval of Section 851 Application; FERC Section 203 Filing.**

(i) SCE shall seek to obtain authorization for the Option Agreement from the CPUC pursuant to Section 851 of the California Public Utilities Code by filing with the CPUC a request for approval of the Option Agreement, as soon as practicable. SCE agrees to use diligent efforts to secure CPUC approval of the Option Agreement, and Seller shall use diligent efforts to support SCE in obtaining such approval. In the event the CPUC issues an order approving the Option Agreement with no conditions, the Option Agreement shall become effective in accordance with its terms. In the event the CPUC issues an order approving the Option Agreement subject to certain conditions, SCE and Seller shall have the right to review and approve such conditions prior to the Option Agreement becoming effective, as follows: SCE shall promptly deliver to Seller a copy of any such order by the CPUC, and Seller and SCE shall have twenty-one (21) days to elect either to:

- (1) Abide by any conditions imposed by the order; or
- (2) Decline to abide by such conditions if the declining Party will suffer a material adverse effect as a result of such condition.

If SCE and Seller agree to abide by such conditions or neither Party declines to abide by the conditions as provided in subsection (2) above within the twenty-one (21) day period, then the Option Agreement shall become effective in accordance with its terms. SCE makes no



representation or warranty to Seller regarding the outcome or length of the CPUC Section 851 application process. In the event the CPUC prohibits SCE from granting Seller the rights described in the Option Agreement despite SCE's diligent efforts, or the Parties decline to accept the conditions as specified in the CPUC decision within the 30-day period as specified above, then either Party may terminate this Agreement on ten (10) days Notice to the other Party.

- (ii) If the Option Agreement requires FERC approval under Section 203 of the Federal Power Act, as amended, then SCE shall be required to file a request for FERC approval of the Option Agreement ("Section 203 Approval"). In the event Section 203 Approval is required, SCE shall use diligent efforts to obtain such approval. Seller shall use diligent efforts in support of the Section 203 Approval.

(c) Seller's Regulatory and Governmental Filings.

Within one (1) year of the Wind Lease Development Period Commencement Date, Seller shall file all of the following:

- (i) An application or applications, or other appropriate request or requests with the appropriate state or local authority for a permit authorizing Seller to construct and Operate the Generating Facility (the "Conditional Use Permit");
- (ii) An application or other appropriate request to the CEC for CEC Certification.

Seller shall seek the Conditional Use Permit and CEC Certification expeditiously, including promptly responding to any requests for information related to the Conditional Use Permit and CEC Certification from the requesting authority.

Seller shall have the right to amend any CEC Certification application or Conditional Use Permit application after filing (or the Conditional Use Permit or CEC Certification after issuance) to reflect adjustments to the Generating Facility's Nameplate Contract Capacity allowed under Special Condition A(iv) or any other matters as determined by Seller.

- (d) Seller's Application for Participation in the Participating Intermittent Resource Program.

As soon as practicable, but in any event no later than thirty (30) days after CPUC Approval or the Wind Lease Development Period Commencement Date, whichever comes later, or such later date as may be agreed to in a writing signed by both Parties, or, if later, the date on which such request will be accepted by the ISO. Seller shall submit in accordance with applicable tariffs and regulations an application or other appropriate request for participation in the Participating Intermittent Resource Program and shall thereafter exercise diligence and expeditiously proceed with the application process.

## 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) This Agreement has been duly executed by authorized representatives of Seller and SCE;
- (ii) CPUC Approval has been obtained or waived by SCE, as provided herein;
- (iii) CEC Certification has been obtained;
- (iv) CPUC Section 851 Approval, if required, has been obtained;
- (v) Section 203 Approval, if required, has been obtained;
- (vi) Initial Operation.

- (b) Initial Operation.

Initial Operation shall be the date selected by Seller (the "Selected Date") to begin Scheduling electrical energy to SCE. Seller shall provide at least three (3) Business Days advance Notice to SCE of the Selected Date. The Selected Date shall be no later than the last to occur of the following:

- (i) One hundred twenty (120) days from the first date that the Generating Facility operates in parallel with the applicable Transmission Provider's electric system; or
- (ii) Five (5) days from the date that Seller becomes a Participating Intermittent Resource or from the date on which a computer model or

independent third party is approved or deemed approved pursuant to Section 11.05.

In addition, as of the Selected Date:

- (iii) The Generating Facility shall be Operating in parallel with the applicable Transmission Provider's electric system; and
- (iv) Seller shall be Scheduling electric energy to SCE at the Delivery Point.

#### 2.04 Termination Rights of the Parties.

This Agreement will terminate as follows:

##### (a) Termination Rights of Both Parties.

Either Party shall have the right to terminate the Agreement, without liability for the termination, on written Notice, which termination 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 *either* CEC Certification or Conditional Use Permit have not been obtained within eighteen (18) months of the Wind Lease Development Period Commencement Date and a Notice of termination is given on or before the end of the nineteenth (19<sup>th</sup>) month after the Wind Lease Development Period Commencement Date; or
- (iii) If Seller does not, on or before September 1, 2006, execute and close the Wind Lease and the Option Agreement with SCE, all under terms and conditions acceptable to Seller (which Seller anticipates will include, among other terms and conditions, Wind Lease royalties of five percent (5%) of Energy Payments and a provision that causes the Wind Lease and the Option Agreement to terminate in the event that this Agreement terminates unless the termination of this Agreement is caused by an SCE Event of Default), and a Notice of termination is given not later than thirty (30) days after such date.

(b) Termination Rights of Seller.

Seller shall have the right to terminate the Agreement, without liability for the termination, on written Notice, which termination shall be effective five (5) Business Days after such Notice is given to SCE in the following circumstances:

- (i) If, despite Seller's commercially reasonable efforts to do so, (a) Seller does not obtain all permits, licenses and other authorizations required to build and Operate the Generating Facility on or before June 1, 2007 or (b) such permit, license or authorization is denied or becomes impracticable to obtain on commercially reasonable terms and conditions, Seller shall have the right to terminate this Agreement by providing Notice of such termination to SCE not later than October 1, 2007;
- (ii) If despite Seller's commercially reasonable efforts to do so, (a) Seller does not, on or before August 1, 2007, obtain all leases, rights-of-way and other agreements, if any, in addition to the Wind Lease and the Option Agreement, required to give the Seller control of the Site and to enable Seller to interconnect the Generating Facility as provided in the Interconnection Agreement, or (b) if any such lease, right-of-way or other agreement becomes impracticable to obtain on commercially reasonable terms and conditions, Seller shall have the right to terminate this Agreement by providing Notice to SCE not later than September 30, 2007;
- (iii) If Seller does not, on or before August 15, 2006, (x) execute an assignment and assumption agreement assigning the Interconnection Agreement from Wintec Energy, Ltd., to Seller, and (y) obtain all consents required for the assignment to Seller and use by Seller of the Interconnection Agreement, in each case under terms and conditions acceptable to Seller, or if Seller determines that the Interconnection Agreement is not sufficient to interconnect the Generating Facility with the Transmission Provider's transmission system, Seller shall have the right to terminate this Agreement by providing Notice to SCE not later than sixty (60) days after the Effective Date;
- (iv) If Seller does not, on or before the August 15, 2006, execute and close the Asset Purchase Agreement between Seller and Wintec Energy, Ltd., under terms and conditions acceptable to Seller, Seller shall have the right to terminate this Agreement by providing Notice to SCE not later than thirty (30) days after such date;

- (v) If (x) SCE does not prepare an incomplete request for approval of the Option Agreement (as contemplated under Section 2 of the Option Agreement) and file such request with the CPUC, pursuant to Section 851 of the California Public Utilities Code, on or before the date that is thirty (30) days after the Execution Date (as defined in the Option Agreement), or (y) after Seller has provided to SCE all such information required to complete the CPUC Section 851 application, including, without limitation, all documentation required under the California Environmental Quality Act ("CEQA"), SCE does not use diligent efforts to complete the request for approval of the Option Agreement and thereafter seek prompt CPUC approval of the Option Agreement, Seller shall have the right to terminate this Agreement by providing Notice to SCE;
- (vi) If SCE does not receive the CPUC Section 851 Approval on or before August 1, 2007, Seller shall have the right to terminate this Agreement by providing Notice to SCE not later than September 30, 2007;
- (vii) If Seller reasonably determines that the payment for Lost Output relating to West of Devers Transmission Upgrades under Section 4.02(d) will not adequately compensate Seller for the anticipated effect of the West of Devers Transmission Upgrades on the operation of the Generating Facility (taking into consideration the impact of other transmission upgrades planned by SCE), Seller shall have the right to terminate this Agreement by Notice to SCE given no later than September 1, 2006. In connection with any Notice of termination given under this subsection, Seller shall provide to SCE documentation to support its conclusion that the payment for Lost Output relating to West of Devers Transmission Upgrades under Section 4.02 will not adequately compensate Seller for the anticipated effect of the West of Devers Transmission Upgrades on the operation of the Generating Facility (taking into consideration the impact of other transmission upgrades planned by SCE);
- (viii) If the Parties are unable to agree upon the Example for Lost Output within thirty (30) days after SCE's Notice under Section 3.18(e) and if Seller reasonably concludes that the Example proposed by SCE under Section 3.18(e) for Lost Output will not adequately calculate Lost Output, Seller shall have the right to terminate this Agreement by Notice given no later than sixty (60) days after SCE's Notice proposing the Example under Section 3.18(e); or
- (ix) If (i) the Firm Operation Date and the Startup Deadline are extended under Article Five due to Force Majeure such that the Generating

Facility will not be placed into service for PTC purposes before December 31, 2007, and (ii) Federal Production Tax Credit Legislation has not been enacted before 11:59 p.m. on December 31, 2007, then Seller shall have the right to terminate this Agreement by giving such Notice to SCE not later than June 30, 2008.

(x) If, due to the following conditions:

- (1) Seller is required to construct electrical underground facility crossings that are more than the five (5) crossings set forth in Part 10(e) of Exhibit D to the Option Agreement as a result of design requirements imposed upon the Generating Facility by the Authorities (as defined under Section 5.2 of the Option Agreement) or the CPUC; and
- (2) SCE does not grant Seller the right to construct such crossings within the Existing Transmission Corridor and/or the Future Transmission Corridor and SCE's failure to grant such right is in compliance with those provisions set forth in Section 6.2 of the Option Agreement,

Seller's capital costs related to the construction of the Generating Facility increase by more than five hundred thousand dollars (\$500,000.00), Seller shall have the right to terminate this Agreement by giving Notice to SCE on or before Initial Operation of the Generating Facility.

(c) Uncured Defaults.

In the event of an uncured Event of Default or an Event of Default for which there is no cure, the Non-Defaulting Party may terminate this Agreement as set forth in Section 6.02.

(d) End of Term.

At the end of the Term as set forth in Special Condition C, this Agreement shall automatically terminate.

(e) Extension of Deadlines in Certain Circumstances.

- (i) If Seller has made significant progress toward obtaining CEC Certification or a Conditional Use Permit but has not yet obtained both CEC Certification and the Conditional Use Permit by the deadline set forth in Section 2.04(a)(ii), Seller shall have the right to extend both deadlines in Section 2.04(a)(ii) by an additional 120 days by Notice to

SCE as long as it is reasonably likely that CEC Certification and the Conditional Use Permit will in fact be obtained by the end of the additional 120 day period. Recognizing that a termination under Section 2.04(a)(ii) will cause a termination of the Wind Lease, SCE will also act in good faith upon Seller's additional requests for extension of these deadlines.

- (ii) With respect to the deadlines specified in Sections 2.04(b)(i), (ii), (v), and (vi) if significant progress has been made in satisfying the condition specified in the applicable subsection, Seller shall have the right to extend the deadlines specified in that subsection by up to 120 days by Notice to SCE as long as it is reasonably likely that the condition will in fact be satisfied by the extended date. Recognizing that a termination under one of these subsections will cause a termination of the Wind Lease, SCE will also act in good faith upon Seller's additional requests for extension of these deadlines.

#### 2.05 Obligations Surviving Termination.

The obligations that are intended to survive the termination of this Agreement are all of those obligations which arise from Seller's or SCE's covenants, representations, and warranties applicable to, or to be performed, at or during any time period prior to, or as a result of, such termination, including, without limitation:

- (a) Seller's obligation to pay the Energy Replacement Damage Amount in accordance with Section 3.05 with respect to periods before termination;
- (b) Seller's obligation to pay the Warranty Availability Lost Production Payment in accordance with Section 3.15(b) with respect to periods before termination;
- (c) The obligation to make a Termination Payment in accordance with Section 6.03;
- (d) Any indemnity obligations that may arise under Section 10.03 subject to the survival terms and conditions in Section 10.03;
- (e) The obligations of confidentiality as set forth in the Non-Disclosure Agreement between the Parties attached hereto as Exhibit I (subject to the modified terms of confidentiality set forth in Section 10.08);
- (f) The right to pursue remedies under Section 6.02;
- (g) The right to receive a Termination Payment under Section 6.03; and
- (h) The limitation of damages under Article Seven.

2.06 Filing of PPA with FERC.

As of the Effective Date, Seller does not believe it is required to file this Agreement with FERC. If and to the extent Seller is required to do so by Applicable Laws, Seller shall file this Agreement with FERC or any other Governmental Authority with which this Agreement is required to be filed under such Applicable Laws. SCE shall support Seller in obtaining acceptance of this Agreement by FERC or such other Governmental Authority.

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



**ARTICLE THREE. SELLER'S OBLIGATIONS****3.01 Conveyance of Entire Output –  
Conveyance of Environmental Attributes, Resource Adequacy Benefits and Capacity  
Attributes.**

Seller shall use diligent efforts and Prudent Electrical Practices to Schedule and convey the *entire* Metered Amounts during the Term to SCE consistent with the ISO's Scheduling Protocols for day ahead forecasts and hourly scheduling.

Any day-ahead forecasts for hourly scheduling provided under this Agreement shall be provided by Seller to SCE and shall be non-binding, good-faith estimates only. The Parties acknowledge and agree that variations between Delivered Amounts and Scheduled Amounts will occur in the ordinary course of Operation of the Generation Facility because of the nature of the wind resource.

In addition, Seller shall convey any and all Environmental Attributes, Resource Adequacy Benefits and Capacity Attributes during the Term to SCE and SCE shall be given sole title to all such Environmental Attributes, Resource Adequacy Benefits and Capacity Attributes during the Term.

SCE will have the exclusive right, at any time or from time-to-time during the Term, to sell, convey, transfer, allocate, designate, award, report or otherwise provide any and all such Environmental Attributes, Resource Adequacy Benefits and Capacity Attributes to third parties. SCE shall be responsible for its own costs and for any reasonable costs (including but not limited to WREGIS costs) that Seller is required to incur so that Seller can grant, and SCE can account for, claim, document or otherwise use Environmental Attributes, Resource Adequacy Benefits and Capacity Attributes.

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

Seller shall have the right to sell into the ISO real time market any electric energy generated by the Generating Facility before the beginning of the Term and Environmental Attributes, Resource Adequacy Benefits and Capacity Attributes related to such electric energy generation, and to retain all proceeds of such sales.

Notwithstanding anything to the contrary contained in this Agreement, 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.**

Seller hereby conveys to SCE, for the Term of this Agreement, the Resource Adequacy Benefits, if any, associated with the Generating Facility. SCE may claim any such Resource Adequacy Benefits in connection with SCE's efforts 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 the Resource Adequacy Benefits associated with the Generating Facility to any entity other than SCE; and
- (b) Will not, during 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.

Notwithstanding any other provision of this Agreement, Seller reserves and retains any rights or privileges attributed to or associated with the Generating Facility to the extent necessary for Seller to meet any resource adequacy obligations imposed on or required from the Generating Facility by the ISO or any Governmental Authorities in order for the Generating Facility to generate electricity for sale to SCE under the terms of this Agreement.

**3.03 Seller's Obligations to Schedule and Deliver.**

Seller shall be responsible for providing or securing any and all Scheduling, interconnection and transmission service rights (including all regulatory approvals) required to effect delivery and Scheduling of the electric energy from the Seller's Generating Facility at the Delivery Point in the form of Scheduling Coordinator Trades.

Subject to Article Eleven, it shall be Seller's responsibility to pay all Transmission Provider, Scheduling Coordinator 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 Scheduling and delivery of electric energy from Seller's Generating Facility at the Delivery Point.

Seller shall Schedule or cause to be Scheduled the electric energy generated by the Generating Facility in accordance with all applicable ISO requirements and the provisions of Exhibit C. If Seller is not participating in PIRP, or any successor program that accomplishes a similar purpose to PIRP, and there is a difference between the ISO requirements and Exhibit C, Seller shall be responsible for following the more stringent requirements and conforming to the earlier of any filing deadlines

(as long as adherence to a more stringent SCE requirement does not cause Seller to be out of compliance with the ISO). If Seller is participating in PIRP, or any successor program that accomplishes a similar purpose to PIRP and there is a conflict between Exhibit C and applicable ISO requirements, the ISO requirements shall control.

During any period in which SCE serves as Seller's Schedule Coordinator pursuant to Article Eleven, Seller shall reimburse SCE for ISO PIRP Charges as provided in Section 11.04.

### 3.04 Development Fee.

#### (a) Posting the Development Fee.

Seller shall post and thereafter maintain a Development Fee equal to twenty-five dollars (\$25) for each kilowatt of Nameplate Contract Capacity determined pursuant to Special Condition A(iv).

SCE acknowledges receipt of \$220,000 previously posted as part of the Development Fee under the Original PSA (the "Original PSA Deposit").

One-half of the balance of the Development Fee shall be posted no later than the last to occur of:

- (i) Thirty (30) days following the Effective Date of this Agreement, or
- (ii) Upon SPF(US) board approval of the form of guaranty to be attached hereto as Exhibit H, not to exceed sixty (60) days following the Effective Date of this Agreement.

with the remainder to be posted no later than December 31, 2006.

The Development Fee shall be held by SCE as security for Seller maintaining adequate progress in the development of the Generating Facility in accordance with the Milestone Schedule and installing and demonstrating the Nameplate Contract Capacity by the Firm Operation Date.

The Development Fee shall be in the form of either a cash deposit, a Letter of Credit, or a Guaranty Agreement from Seller's Guarantor in the form attached as Exhibit H (with appropriate adjustments for the amount guaranteed) and in accordance with Section 8.02(c). If Seller establishes the Development Fee by means of a Letter of Credit, such Letter of Credit shall be provided in a form proposed by Seller and accepted by SCE (which acceptance shall not be unreasonably withheld, conditioned or delayed).

If the Development Fee is in the form of a Guaranty Agreement, the Guaranty Agreement for the Development Fee shall be known as the "Development Fee Guaranty Agreement" and shall be separate from and in addition to the Guaranty Agreement delivered as Performance Assurance pursuant to Section 8.02.

- (b) Forfeiture of the Development Fee for Failure to Meet Startup Deadline or Failure to Install Minimum Nameplate Contract Capacity by the Firm Operation Date; Extension of the Startup Deadline.

Subject to Seller's right to extend the Startup Deadline or the Firm Operation Date, as provided in this Section 3.04(b), in the event that Initial Operation does not occur on or before the Startup Deadline, or Seller fails to demonstrate at least 30 MW of Nameplate Contract Capacity on or before the Firm Operation Date in accordance with the procedure set forth in Exhibit K SCE shall be entitled to retain the entire Development Fee (or to obtain payment of the Development Fee from Seller under this Agreement or from Seller's Guarantor under the Development Fee Guaranty Agreement) and shall thereupon terminate this Agreement and the Wind Lease;

Neither Party shall have liability for damages for failure to deliver or purchase electric energy, Environmental Attributes, Capacity Attributes or Resource Adequacy Benefits from the Generating Facility after the effective date of such termination.

Seller may elect to extend the Startup Deadline or the Firm Operation Date by paying to SCE Daily Delay Liquidated Damages in an amount equal to one percent (1%) of the Development Fee per day, ("Daily Delay Liquidated Damages") for each day (or portion thereof) from and including the original Startup Deadline or the original Firm Operation Date to any desired extended dates. Seller must, at the earliest possible time, but no later than 6 a.m. on the first day of the proposed Startup Deadline 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.

If the Development Fee has been posted in the form of cash or a Letter of Credit, the Daily Delay Liquidated Damages payments shall be drawn from the Development Fee by SCE as incurred until the Development Fee is depleted, after which Seller shall pay any additional Daily Delay Liquidated Damages in advance in ten (10) day increments.

If the Development Fee is posted in the form of a Development Fee Guaranty Agreement, Seller shall pay SCE the Daily Delay Liquidated Damages payments in cash in advance in ten (10) day increments, and the amount guaranteed under the Development Fee Guaranty Agreement shall be deemed reduced to the extent of such payments.

All Daily Delay Liquidated Damages payments applicable to days included in any Startup Deadline extension shall be nonrefundable. Any Daily Delay Liquidated Damages in excess of the Development Fee shall not be considered as part of the Development Fee but shall nonetheless be nonrefundable.

Seller shall be entitled to a refund of any estimated Daily Delay Liquidated Damages payments paid by Seller which exceed the amount 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.

(c) Full Return of Development Fee.

In each of the following circumstances, the Development Fee shall be returned to Seller (or, if the Development Fee is posted in the form of a Development Fee Guaranty Agreement, the liability of Seller's Guarantor shall be deemed satisfied and discharged to the extent provided below):

(i) Seller Demonstrates Development of the Generating Facility and Installation of Full Nameplate Contract Capacity.

SCE shall return the Development Fee to Seller (or provide Notice to Seller and Seller's Guarantor that the Development Fee obligation contemplated by the Development Fee Guaranty Agreement has been satisfied and discharged) in accordance with the procedure set forth in Exhibit K if both of the following conditions occur:

- (1) Seller achieves Initial Operation by the Startup Deadline or any extended Startup Deadline as provided in Section 3.04(b); and
- (2) Seller demonstrates the full Nameplate Contract Capacity in accordance with the procedure set forth in Exhibit K on or before Firm Operation Date.

(ii) Certain Terminations of the Agreement.

If this Agreement is terminated in accordance with Sections 2.04(a), 2.04(b), or 5.05, SCE shall return the Development Fee to Seller (or provide Notice to Seller and Seller's Guarantor that the Development Fee obligation contemplated by the Development Fee Guaranty Agreement has been satisfied and discharged); provided, however, that (a) if a termination occurs under Sections 2.04(a)(i), 2.04(b)(iv), or 2.04(b)(vii)–(viii), SCE shall be entitled to retain the Original PSA Deposit, and (b) a termination under Section 5.05 shall only entitle Seller to a return of that portion of the Development Fee (or a Notice that the Development Fee Guaranty Agreement has been satisfied and discharged) if it is based upon a Force Majeure which prevents Seller from achieving the conditions necessary to obtain a return of the Development Fee and which occurs prior to SCE providing Notice to Seller that Seller has not complied with conditions necessary to achieve a return of the Development Fee.

If Seller's entitlement to a return of a portion of the Development Fee is based upon this Section 3.04(c)(ii), SCE shall return the Development Fee to Seller in accordance with the procedure set forth in Exhibit K (minus any Original PSA Deposit if the termination occurs under Sections 2.04(a)(i), 2.04(b)(iv), or 2.04(b)(vii) – (viii)).

(d) Deficient Installation of Nameplate Contract Capacity; Partial Forfeiture and Partial Return of the Development Fee.

If, on or before the Firm Operation Date, Seller satisfies all conditions set forth in Section 3.04(c)(i) above and Seller demonstrates at least 30 MW of Nameplate Contract Capacity on or before the Firm Operation Date, but Seller is not able demonstrate the entire Nameplate Contract Capacity in accordance with the procedures set forth in Exhibit K (the "Demonstrated Nameplate Contract Capacity"), then Seller shall only be entitled to a return of the portion of the Development Fee equal to the product of \$25 per kilowatt times the kilowatts of Demonstrated Nameplate Contract Capacity. Seller shall forfeit and SCE shall be entitled to retain the balance of the Development Fee plus any interest earned on the portion of the Development Fee that is not refunded to Seller. If the Development Fee has been posted in the form of a Development Fee Guaranty Agreement, Seller or Seller's Guarantor shall make a cash payment to SCE in the amount of the Development Fee owing as provided in Exhibit K.

If, as set forth above, Seller is unable to demonstrate the ability of the Generating Facility to deliver the Nameplate Contract Capacity as set forth in Special Condition A(iv), the Nameplate Contract Capacity shall be reduced as

of the Firm Operation Date by the amount of Nameplate Contract Capacity not demonstrated (the "Unincluded Capacity") and the Expected Annual Net Energy Production shall be adjusted pursuant to Special Condition A(v).

In the event SCE determines, pursuant to this Section 3.04(d) and the procedure set forth in Exhibit K, that Seller is entitled to only a partial refund of the Development Fee, neither Party shall have any liability for failure to purchase or deliver electrical energy, Environmental Attributes, Capacity Attributes and Resource Adequacy Benefits associated with or attributable to Unincluded Capacity.

If Seller's entitlement to a return of a portion of the Development Fee (or, as appropriate, a partial exoneration of a Development Fee Guaranty Agreement) is based upon this Section 3.04(d), SCE shall provide Notice to Seller and return the Development Fee (or provide Notice of partial exoneration of a Development Fee Guaranty Agreement) to Seller and Seller's Guarantor in accordance with the procedure set forth in Exhibit K.

(e) Liquidated Damages.

The Parties acknowledge that the damages sustained by SCE associated with Seller's failure, in whole or in part, to achieve Initial Operation by the Startup Deadline and/or demonstrate the Nameplate Contract Capacity as provided herein 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 Development Fee posted as of the time of the termination or portion thereof not refunded to Seller as described in this Section 3.04. Notwithstanding any other provision of this Agreement, SCE's receipt of the Development Fee or portion thereof as required by this Agreement (and, if applicable, a reduction in the Nameplate Contract Capacity as provided in Section 3.04(d)) shall be SCE's exclusive remedy for Seller's failure to meet the Startup Deadline or to demonstrate the Nameplate Contract Capacity.

3.05 Seller's Energy Delivery Performance Requirements.

(a) Performance Requirements.

After the Firm Operation Date, Seller shall be subject to the following electric energy delivery performance requirements and damages for failure to perform as set forth below:

(i) Seller's Energy Delivery Obligation.

“Seller’s Energy Delivery Obligation” shall be equal to one hundred forty percent (140%) of the Expected Annual Net Energy Production identified in Special Condition A(v);

(ii) Event of Deficient Energy Deliveries.

At the end of each Term Year commencing with the end of the second Term Year, if the sum of Seller’s Metered Amounts plus any Lost Output in the twenty (24) month period immediately preceding the end of the applicable Term Year does not equal or exceed Seller’s Energy Delivery Obligation, then an “Event of Deficient Energy Deliveries” shall be deemed to have occurred.

(b) Energy Replacement Damage Amount.

If an Event of Deficient Energy Deliveries occurs, as determined in accordance with Section 3.05(a)(ii) above, the Parties acknowledge that the damages sustained by SCE associated with Seller’s failure to meet Seller’s 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.

Within ninety (90) days of the end of the applicable Term Year, SCE shall calculate any Energy Replacement Damage Amount as set forth in Exhibit E, 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 workpapers, and source data.

Seller shall have thirty (30) days after receipt of SCE’s Notice to review SCE’s calculation of the Energy Replacement Damage Amount owing, and either pay the entire Energy Replacement Damage Amount claimed by SCE or pay any undisputed portion and provide Notice to SCE of the portion it disputes along with a detailed explanation of, and rationale for, Seller’s calculation methodology, annotated workpapers, and source data.

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.



Such information may be provided pursuant either to the Non-Disclosure Agreement attached at Exhibit I or to such other agreement that the Parties shall negotiate to provide reasonable protection for their confidential business information or trade secrets.

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

(c) Continuing Obligations of Seller.

Notwithstanding any payment of an Energy Replacement Damage Amount, Seller shall remain obligated to Schedule and convey all electric energy generated by the Generating Facility and to convey all Environmental Attributes, Resource Adequacy Benefits and Capacity Attributes to SCE during the Term, as provided in Sections 3.01 and 3.02.

3.06 Metering.

- (a) Seller shall install (or cause the ISO to install) and shall pay for any and all metering services and related equipment required by the ISO, the Transmission Provider and Seller's Scheduling Coordinator. Such equipment shall include, but not be limited to, an ISO approved revenue quality meter or meters, ISO approved data processing gateway, telemetry equipment and data acquisition services sufficient for recording and reporting all electric energy produced by the Generating Facility less Station Use (collectively the "ISO Approved Meter").
- (b) Subject to Section 3.14, Seller shall grant SCE reasonable access to the meter(s) for meter readings, testing and any purpose necessary to effectuate this Agreement.
- (c) Prior to Initial Operation, Seller shall provide instructions to the ISO granting authorizations or other documentation sufficient to provide SCE with access to the ISO Approved Meter in addition to Seller's settlement data on OMAR. Seller shall promptly inform SCE of meter quantity changes after being informed of any such changes by the ISO.

3.07 Site Control.

- (a) At all times after the Final Configuration Date, Seller shall have Site Control, which means that Seller shall:
- (i) Own the Site;

- (ii) Be the lessee under a Lease (or under a sub-lease or similar agreement in connection with a leveraged leasing transaction);
  - (iii) Be the holder of a right-of-way grant or similar instrument; 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.
  - (v) Be an Affiliate of the entity that owns the Site or is the lessee of the Site under a Lease (or under a sub-lease or similar agreement in connection with a leveraged leasing transaction) or a holder of a right-of-way grant or similar instrument and be able to control the Operation of the Site and Generating Facility through such Affiliate.
- (b) Seller shall provide SCE with prompt written Notice of any change in the status of Seller's Site Control.

### 3.08 Site Location.

This Agreement is Site specific as set forth in Special Condition A(ii). However, on or before the Final Configuration Date, Seller may, with SCE's prior written consent (which SCE shall not unreasonably withhold, condition or delay), change the location of the Site provided that the interconnection point with the Transmission Provider is not changed. Seller shall promptly provide a revised Exhibit A describing any new Site in the event Seller elects to change the Site location.

### 3.09 Design.

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

- (a) Design and construct the Generating Facility.
- (b) Use commercially reasonable efforts to acquire all permits and other approvals necessary for the construction and Operation of the Generating Facility.
- (c) Provide to SCE, at least fifteen (15) days prior to the anticipated Initial Operation date, the following Generating Facility information:
  - (i) Site plan drawings;
  - (ii) Wind Turbine manufacturer specifications;
  - (iii) Electrical single line diagrams describing generation, loads, metering and protection; and

*The contents of this document are subject to a Non-Disclosure Agreement and shall not be disclosed.*

- (iv) Major electrical equipment specifications.
- (d) Provide 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.

### 3.10 Operation.

- (a) Seller shall Operate the Generating Facility in accordance with Prudent Electrical Practices.
- (b) 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, including, but not limited to: real and reactive power production, changes in Operating status, protective apparatus operations, and any unusual conditions found during inspections. Seller shall maintain each daily operations log for five (5) years from the date on which the log is created. Seller's daily operations log must be provided or made available to SCE within thirty (30) days of any Notice from SCE requesting that the information be provided.

In addition, Seller shall maintain complete records of the Generating Facility's wind speeds and other pertinent meteorological conditions, maintenance performed, kilowatts, kilovars and kilowatt-hours generated and settings or adjustments of the generator control equipment and protective devices. Seller shall maintain each record required by this paragraph for five (5) years from the date on which the record is created.

Seller's records required by this paragraph must be provided or made available to SCE within sixty (60) days of any Notice from SCE requesting that the information be provided.

Regardless of how it is labeled, all information required by this Section 3.10 shall be kept confidential under Section 10.08.

- (c) 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 1, May 1, and September 1 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;
- (iii) Scheduled outages by using SCE's automated telephone-based Interactive Voice Response System (IVR), or its replacement, with as much advanced notice as practicable, at the telephone number(s) listed in Exhibit B; and
- (iv) Unexpected or unscheduled outages by telephoning SCE's Generation Operations Center as soon as practicable, at the telephone number(s) listed in Exhibit B.

With respect to Sections 3.10(c)(i) and 3.10(c)(ii) above, Seller shall have no liability to SCE for damages caused by inaccurate generation forecasts, provided that Seller uses PIRP or other commercially reasonable efforts in developing and submitting such forecasts to SCE (including using an approved computer model or independent third party forecaster selected pursuant to Article Eleven).

- (d) 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-owned utilities of expected or experienced outages by facilities under contract with such investor-owned utilities to supply electric energy.
- (e) Seller shall comply with the Scheduling requirements and procedures set forth in Section 3.03 at its sole expense.
- (f) 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 information as requested by SCE and will work with the ISO to provide metering information as requested by SCE, including, but not limited to, the following:

For each ISO meter ("read only" user access only):

- (i) Generating Station/Unit ID,
- (ii) ISO Global Resource ID,
- (iii) ISO 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) Utility transmission/distribution one line diagram,
- (ii) Physical location, address or descriptive identification,
- (iii) Latitude and longitude,
- (iv) Telephone number for operational issues (24-hour desk that can provide contact with the control room and the Site),
- (v) Telephone number for administrative issues.

3.11 Progress Reporting.

- (a) Seller shall use commercially reasonable efforts to meet the Milestone Schedule and to avoid or minimize any delays in meeting such schedule.
- (b) Seller shall provide a monthly written report of its progress toward meeting the Milestone Schedule using the form and procedures set forth in Exhibit G.
- (c) In addition to providing the monthly report set forth above, 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.

3.12 No Representation by SCE.

- (a) Any review by SCE of the design, construction and Operation of the Generating Facility or interconnection facilities is solely for SCE's information. By making such review, SCE makes no representation as to the economic and technical feasibility, operational capability, or reliability of the Generating Facility.

- (b) Seller shall in no way represent to any third party that any such review by SCE of the Generating Facility, including, but not limited to, any review of the design, construction and Operation of the Generating Facility or interconnection facilities by SCE, is a representation by SCE as to the economic or technical feasibility, operational capability, or reliability of the Generating Facility. Seller is solely responsible for economic and technical feasibility, operational capability, and reliability of the Generating Facility.

### 3.13 Provision of Information.

- (a) Seller shall promptly provide to SCE copies of 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) Seller shall include in its monthly written report submitted to SCE pursuant to Section 3.11(b), a list of all letters, notices, applications, approvals, authorizations, filings, permits and licenses relating to any Governmental Authority or the ISO issued within the prior month and shall provide copies of final versions of any such documents as may be reasonably requested on Notice from SCE.
- (c) Seller shall promptly provide to SCE copies of all applications and approvals relating to the Conditional Use Permit, PIRP and CEC Certification.
- (d) Seller shall promptly provide SCE with copies of all final and revision copies of reports, studies and analyses furnished by the ISO or any transmission provider, and any ISO correspondence related thereto, concerning the transmission system or transmission of electric energy from the Generating Facility to the Delivery Point.
- (e) Seller shall promptly provide SCE with copies of all monthly settlement invoices Seller receives from its Scheduling Coordinator, if any, pertaining to the Generating Facility. Seller shall have the right to redact from such copies all information pertaining to other Seller's assets. All such settlement data may be provided pursuant either to the Non-Disclosure Agreement attached at Exhibit I or to such other agreement that the Parties shall negotiate to provide reasonable protection for their confidential business information or trade secrets.
- (f) Seller shall promptly provide SCE with a copy of a Generating Facility feasibility study, if any, prepared on behalf of Seller by an independent engineer. Seller shall have the right to redact the copy of any such study to remove information that Seller deems to be confidential or proprietary.

**3.14 SCE's Access Rights.**

- (a) Upon at least two (2) Business Days Notice to Seller or as set forth in any Tariff, SCE shall have the right of ingress and egress to examine the Site and Generating Facility during regular business hours for any purpose reasonably connected with this Agreement or the exercise of any and all rights secured to SCE by law or its tariff schedules and rules on file with the CPUC. SCE and Seller shall cooperate in good faith to schedule site visits so as not to interfere with operations at the Generating Facility.
- (b) SCE's employees and agents shall observe all safety and other rules generally applicable to personnel on the Site. SCE's entry upon the Site under this Agreement shall be at SCE's sole risk and expense, and SCE shall defend, indemnify and hold Seller harmless from any claims, damages, costs and other liabilities arising from SCE's entry upon the Site (except for claims, damages, costs and other liabilities caused by Seller's gross negligence or intentional misconduct).

**3.15 Seller's Obligation to Make Warranty Availability Lost Production Payment.**

- (a) Beginning after the end of the first Term Year and continuing until after the end of the fifth (5th) Term Year, on or before the thirtieth (30th) day after the end of each Term Year, Seller shall calculate the Generating Facility Availability for each Term Year in accordance with Exhibit R and any Warranty Availability Lost Production and provide Notice to SCE of such calculations. The calculation shall take into account any adjustments to data occurring pursuant to Section 3.18(c), Section 4.03(b) or Section 4.03(e).
- (b) Seller shall pay SCE, within ten (10) Business Days, after providing SCE Notice of its calculations as set forth above Warranty Availability Lost Production Payments, calculated by Seller to SCE.
- (c) On Notice from SCE, Seller shall promptly make available to SCE all documents or other information relied upon by Seller to calculate, or which is otherwise relevant to the calculation of, the Warranty Availability Lost Production Payment. SCE shall keep all such information confidential in accordance with Section 10.08.
- (d) Any Warranty Availability Lost Production Payment shall be made by Seller irrespective of whether SCE actually purchased replacement electric energy as a result of the Generating Facility's failure to achieve the Warranty Availability Guarantee.
- (e) The Warranty Availability Lost Production Payment shall be a credit against Energy Replacement Damage Amounts owed by Seller as provided in

Exhibit E, but shall not otherwise replace or reduce Seller's obligation to pay the Energy replacement Damage Amount.

- (f) Under no circumstance shall Seller be required to pay to SCE total aggregate Warranty Availability Lost Production Payments not offset against Energy Replacement Damage Amounts during the Term in excess of fifty dollars (\$50) per kilowatt of Nameplate Contract Capacity.

### 3.16 Obtaining and Maintaining CEC Certification.

Seller shall take all necessary steps including, but not limited to, making or supporting timely filings with the CEC to obtain and maintain CEC Certification throughout the entirety of 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 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 occurring after the Effective Date; and
- (b) The term "commercially reasonable efforts" in Section 3.16(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.

### 3.17 Obligations to Provide Notice in Event of Cessation or Termination of Service Agreements.

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

### 3.18 Report of Lost Output.

- (a) Monthly Report.

Commencing on the date of Initial Operation 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. The Lost Output Report shall identify the date, time, duration, cause and percentage by which the Generating Facility's output was curtailed for each Lost Output event, together with Seller's calculations in accordance with Exhibit L and Seller's statement demonstrating the Lost Output that would have been produced and delivered to SCE, but for the Lost Output event.



SCE shall maintain a log that shall include hourly information about the West of Devers Transmission Upgrades and their effect on available transmission. To facilitate Seller's Monthly Output Report, SCE shall within twenty (20) days of Seller's request provide to Seller such information as Seller shall reasonably request to enable Seller to evaluate the extent to which Lost Output is attributable to the West of Devers Transmission Upgrades and the quantity of such Lost Output.

(b) SCE's Review.

SCE shall have thirty (30) days after receipt of Seller's monthly Lost Output Report to review Seller's calculation of Lost Output. Upon SCE's request, Seller shall promptly provide to SCE any additional data and supporting documentation necessary for SCE to audit and verify the Lost Output event and calculation of electric energy that could have been produced and delivered, but for the Lost Output event. Such information may be provided pursuant either to the Non-Disclosure Agreement attached at Exhibit I or to such other agreement that the Parties shall negotiate to provide reasonable protection for their confidential business information or trade secrets.

(c) Disputes of Lost Output.

If SCE disputes Seller's calculation of Lost Output including without limitation Seller's determination that Lost Output is attributable to the West of Devers Transmission Upgrades, it shall provide Notice to Seller within thirty (30) days after receipt of Seller's Lost Output Report and include SCE's calculations and other data supporting its contention that any of the amounts claimed in Seller's Lost Output Report does not qualify as Lost Output or is not attributable to the West of Devers Transmission Upgrades. The Parties shall negotiate in good faith to resolve any dispute regarding a claim for Lost Output. If the Parties are unable to resolve a dispute regarding a claim for Lost Output within thirty (30) days of SCE's giving the dispute Notice, either Party may submit the dispute to arbitration as provided in Article Twelve.

Seller shall have no right to claim any Lost Output unless the Lost Output event was identified in the Lost Output Report for the month in which the Lost Output occurred; *provided, however,* that:

- (i) Lost Output identified in a Lost Output Report shall be subject to adjustment to reflect settlement data and other information received from the ISO or SCE after Seller completes the Lost Output Report (with such adjustment to be noted no later than the Lost Output Report for the month following the month in which such settlement data or other information are received); and

- (ii) If SCE's failure to provide information concerning the West of Devers Transmission Upgrades impairs Seller's ability to claim Lost Output with respect to the West of Devers Transmission Upgrades, Seller shall have thirty (30) days from the date on which it receives such information in which to claim the Lost Output in a Lost Output Report.

SCE shall be deemed to have accepted any claim of Lost Output or portion thereof to which it has not provided Notice of objection and supporting data as required by this subsection within thirty (30) days after receipt of Seller's Lost Output Report.

- (d) Energy Replacement Damage Amount Calculation.

The Lost Output amount that shall be used in the Energy Replacement Damage Amount calculation, set forth in Exhibit E, shall be the amount calculated after the twelfth (12<sup>th</sup>) month of the Term Year using the Generating Facility Power Curve derived for the Term Year for which the Lost Output is being calculated.

- (e) Example.

No later than September 1, 2006, SCE shall propose by Notice to Seller an Example illustrating in reasonable detail the calculation of Lost Output under Exhibit L. The Example shall be subject to Seller's approval (which shall not be unreasonably withheld, conditioned or delayed).

3.19 SCE's Exclusive Remedy.

Subject to SCE's rights and remedies, if Energy Replacement Damage Amounts or Warranty Availability Damage Payments are not paid when due under this Agreement, Energy Replacement Damage Amounts determined under this Agreement shall be SCE's exclusive remedy for Seller's failure to meet Seller's Energy Delivery Obligation, and the payment for Warranty Availability Damage Amounts determined under this Agreement shall be SCE's exclusive remedy for Seller's failure to meet the Warranty Availability Guarantee.

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

**ARTICLE FOUR. SCE'S OBLIGATIONS**

**4.01 Obligation to Pay.**

For Seller's *full* compensation under this Agreement, SCE shall:

- (a) Make monthly Energy Payments to Seller for electric energy Scheduled by Seller during the Term calculated in the manner described in Section 4.02; and
- (b) Make payments for Lost Output during any curtailment or reduction of deliveries ordered or caused by the ISO, or SCE acting as a Transmission Provider, (i) as a result of construction activities associated with the West of Devers Transmission Upgrades as set forth in Section 4.02(d), or (ii) before a Change in ISO Tariff that implements locational marginal pricing, as a result of any events contemplated by subsection (c) of the definition of "Lost Output."

Except as set forth in Section 4.02(d), SCE shall not be obligated to pay Seller for any electric energy prior to the commencement of the Term or any electric energy that is not Scheduled as a result of any circumstance, other than negligence or gross negligence by SCE related to the Scheduling of electric energy produced by the Generating Facility or SCE's failure to perform its duties under Section 4.04, including, without limitation:

- (c) An outage of the Generating Facility;
- (d) A Force Majeure under Article Five;
- (e) A reduction or curtailment of Schedules ordered by the ISO, except such reduction or curtailment that (i) results from the construction activities associated with the West of Devers Transmission Upgrades as set forth in Section 4.02(d) or (ii) before a Change in ISO Tariff that implements locational marginal pricing, as a result of any events contemplated by subsection (c) of the definition of "Lost Output ;" or
- (f) A reduction or curtailment of Schedules pursuant to the terms of an agreement with a Transmission Provider.

**4.02 Payments and Adjustments.**

- (a) Time-Differentiated Payments.

For the purpose of monthly Energy Payments, Scheduled Amounts shall be time-differentiated according to the time period and season of delivery

(“TOD Periods”) by the Energy Payment Allocation Factors set forth in Exhibit J.

As set forth in Exhibit J, 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.

(b) Energy Payment Calculations.

During the Term, SCE shall pay Seller a monthly Energy Payment equal to the sum of the monthly “TOD Period Energy Payments” for all TOD Periods in the month as set forth below.

Each of the monthly TOD Period Energy Payment amounts shall be calculated pursuant to the following formula, where “n” is the TOD Period being calculated:

$$\text{TOD PERIOD}_n \text{ ENERGY PAYMENT} = A \times B \times C$$

Where A = Energy Price specified in Special Condition D in \$/MWh.

B = Energy Payment Allocation Factor for the TOD Period being calculated.

C = The sum of Scheduled Amounts in all hours for the TOD Period being calculated in MWh.

(c) Payment Adjustments.

If, in any month the Generating Facility’s Scheduled Amounts deviate from the Generating Facility’s Delivered Amounts by more than plus or minus three percent ( $\pm 3\%$ ) of the Generating Facility’s Delivered Amounts, then Seller’s monthly Energy Payment may be subject to an adjustment (debit or credit) calculated by SCE in accordance with the procedures and formulae set forth in Exhibit D.

Notwithstanding the foregoing, the Exhibit D payment adjustments shall *not* apply so long as:

- (i) The Generating Facility is and remains a Participating Intermittent Resource and participates in the ISO’s Participating Intermittent Resource Program, or any substantially similar successor program; or
- (ii) Seller, Seller’s Scheduling Coordinator, or SCE, as applicable, is Scheduling electrical energy from the Generating Facility through an

independent third party or a computer model approved in accordance with Section 11.05.

(d) Payment for Lost Output.

SCE shall make payments to Seller for any Lost Output attributable to a reduction or curtailment of Schedules ordered by either the ISO or SCE acting in its capacity as Transmission Provider, which reduction or curtailment is attributable to the West of Devers Transmission Upgrades (including but not limited to reduction or curtailment caused by physical activities associated with the West of Devers Transmission Upgrades or by incremental congestion associated with the West of Devers Transmission Upgrades).

Any payment due Seller for Lost Output relating to West of Devers Transmission Upgrades shall be calculated based on the sum of the monthly TOD Period Lost Output amounts. Each of the monthly TOD payments relating to Lost Output for West of Devers Transmission Upgrades shall be calculated pursuant to the following formula, where "n" is the TOD Period being calculated:

TOD PERIOD<sub>n</sub> PAYMENT FOR LOST OUTPUT RELATED TO WEST OF DEVERS TRANSMISSION UPGRADES =

$$[A \times B \times C \times D \times E] + [C \times F]$$

Where A = Energy Price specified in Special Condition D in \$/MWh.

B = Energy Payment Allocation Factor for the TOD Period being calculated.

C = The sum of Lost Output attributable to the West of Devers Transmission Upgrades in all hours for the TOD Period being calculated as set forth in Exhibit L in MWh.

D = GMM, as applicable

E = DLF, as applicable

F = The PTC *Before-Tax* Benefit rate calculated as set forth in Exhibit P for all Term Years that the Generating Facility qualifies for PTC or zero for all Term Years that the Generating Facility does not qualify for PTC in \$/MWh.

SCE's payments for Lost Output relating to the West of Devers Transmission Upgrades shall be included in the next regular monthly payment to Seller after

SCE's acceptance or deemed acceptance of Seller's Lost Output calculation under Section 3.18 or a final arbitration determination, as applicable, of Seller's claim of Lost Output relating to the West of Devers Transmission Upgrades. If SCE disputes some but not all of Seller's claim for Lost Output relating to West of Devers Transmission Upgrades, it shall pay the undisputed amount.

SCE's payments for Lost Output relating to the West of Devers Transmission Upgrades shall be subject to adjustment at the end of each Term Year to reflect a recalculation of Lost Output based upon Seller's final estimate of Lost Output for the Term Year in accordance with the procedures set forth in Exhibit L (taking into account any new data and information obtained or provided under Section 3.18(c)). The adjustment (i.e. an additional payment by SCE or a reduction in Seller's payment) shall be included in the second regular monthly payment to be made to Seller after the conclusion of the Term Year.

In addition, for periods before a Change in ISO Tariff that implements locational marginal pricing, SCE shall make payments to Seller for any Lost Output attributable to a reduction or curtailment of Schedules for any reason contemplated by subsection (c) of the definition of "Lost Output" other than Lost Output relating to the West of Devers Transmission Upgrades. Such payments shall be calculated, paid and adjusted in the same manner as provided above in this Section 4.02 with respect to Lost Output relating to the West of Devers Transmission Upgrades.

#### 4.03 Payment Statement and Payment.

- (a) SCE shall, no later than thirty (30) days after the end of each calendar month during the Term (or the last day of the month if the month is February), or on the last Business Day of the month if such 30<sup>th</sup> day (or 28<sup>th</sup> or 29<sup>th</sup> day for February) is a weekend day or holiday, do each of the following:
  - (i) Send Seller a statement via e-mail or facsimile showing:
    - (1) The Scheduled Amounts for each TOD Period during the monthly period for which the payment is being made;
    - (2) A calculation of the amount payable to Seller during the monthly period pursuant to Section 4.02(b);
    - (3) A calculation of any payment adjustments pursuant to Section 4.02(c);

- (4) A calculation of any adjustments pursuant to calculation of any Lost Output related to the West of Devers Transmission Upgrades and/or subsection (c) of the definition of Lost Output, all as provided in Section 4.02(d); and
  - (5) A calculation of the net amount due Seller.
- (ii) Send to Seller by 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) For informational purposes only, SCE shall send by e-mail or facsimile to Seller not later than fifteen (15) calendar days after the end of each calendar month, a preliminary non-binding statement of the information set forth in Section 4.03(a)(i); SCE shall use reasonable efforts to send the preliminary statement by the 10<sup>th</sup> (tenth) calendar day after the end of the preceding calendar month. After SCE issues the non-binding statement, the Parties shall cooperate diligently and in good faith to share relevant information and to resolve any disagreements raised by the non-binding statement before the final statement is issued under Section 4.03(a)(i).
- (c) In the event SCE determines that 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, shall be made as an adjustment to the next monthly statement and payment due Seller after SCE's recomputation using corrected measurements. In the event that the recomputation results in a net amount owed to SCE after reducing any amounts owing to Seller as shown on the next monthly statement, any such additional amount still owing to SCE shall be shown on the monthly statement. At SCE's discretion, SCE may decrease future monthly payments to Seller by any remaining amount owed to SCE or invoice Seller for such amount, in which case Seller must pay the amount owing to SCE within twenty (20) days of receipt of such invoice.
- Adjustment payments for meter inaccuracy shall not bear interest.
- (d) SCE reserves the right to apply amounts that would otherwise be due to Seller under this Agreement against:

- (i) Any outstanding and past due amounts owing and unpaid by Seller to SCE under this Agreement following Notice of default and opportunity to cure as provided in Section 6.01(c) of this Agreement;
- (ii) Any outstanding and past due amounts owing and unpaid to SCE by Seller under the Wind Lease or the Option Agreement, or any other agreement, tariff, obligation or liability between Seller and SCE, following notice of default and opportunity to cure thereunder as provided in the Wind Lease or the Option Agreement or any other agreement or tariff, as applicable.

Nothing in this Section 4.03(d) shall limit either Party's rights under applicable tariffs, other agreements or Applicable Law.

Seller reserves the right to apply amounts that would otherwise be due to SCE under this Agreement against:

- (x) Any outstanding and past due amounts owing and unpaid by SCE to Seller under this Agreement following notice of default and opportunity to cure as provided in Section 6.01(c) of this Agreement; or
- (y) Any outstanding and past due amounts owing and unpaid to Seller by SCE under the Wind Lease and the Option Agreement or any other agreement, tariff, obligation or liability between Seller and SCE, following notice of default and opportunity to cure thereunder as provided in as provided in the Wind Lease and the Option Agreement or any other agreement or tariff, as applicable..

Except for meter inaccuracies which are provided for in Section 4.03(c) and as otherwise provided in this Section 4.03(d), if within forty-five (45) days of 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 statement, computation and payment, and the statement shall be conclusively deemed correct and complete; provided, however, 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, then Seller shall have an additional forty-five (45) days from the date on which it receives the information from the ISO in which to give Notice to SCE of the error identified by such settlement information.

- (e) 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 statement that is calculated. If Seller identifies an error in



SCE's favor and SCE agrees that the identified error occurred, SCE may, in the next monthly statement that is calculated, reduce amounts otherwise owed to Seller by the amount of the SCE overpayment caused by the error. Late payments to Seller resulting from SCE's errors, or overpayments to Seller by SCE, shall bear 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 statement shall not bear interest. In the event that the recomputation results in a net amount still owing to SCE after decreasing the amounts owed to Seller by any amounts owed to SCE by Seller, the next monthly statement shall show a net amount owing to SCE. At SCE's discretion, SCE may decrease future payments to be made by SCE to Seller by this net amount owed to SCE or invoice Seller for such amount, in which case Seller must pay the amount owing to SCE within twenty (20) days of receipt of such invoice. The Parties shall negotiate in good faith to resolve any disputes regarding claimed errors in a statement. Any disputes which the Parties are unable to resolve through negotiation may be submitted for resolution through the dispute resolution procedure in Article Twelve.

#### 4.04 Cooperation with Seller and Scheduling.

SCE, at its own cost and expense, shall cooperate reasonably and diligently with Seller to permit it to effectuate its Scheduling obligations hereunder.

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

**ARTICLE FIVE. FORCE MAJEURE**

**5.01 No Default if Performance Failure other than Nonpayment Caused by 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.

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 Party involved in the dispute, 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.

**5.03 Startup Deadline Extension.**

If a Force Majeure occurs prior to the Startup Deadline which prevents Seller from achieving the Startup Deadline, then the Startup Deadline shall be extended on a day-for-day basis for the duration of the Force Majeure.

5.04 Firm Operation Date Extension.

If Force Majeure occurs at any time after commencement of the Term, but prior to the Firm Operation Date, which prevents Seller from demonstrating the Nameplate Contract Capacity as provided in Sections 3.04(c) or 3.04(d), then the Firm Operation Date shall 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 extends for more than five hundred forty (540) consecutive days, or for more than a total of five hundred forty (540) days in any consecutive seven hundred thirty (730) day period.

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

**ARTICLE SIX. EVENTS OF DEFAULT: REMEDIES****6.01 Events of Default.**

An "Event of Default" shall mean, with respect to a Party (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 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;
- (b) Except for an obligation to make payment when due, 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, which Notice sets forth in reasonable detail the nature of the Event of Default, provided that if such Event of Default 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 Event of Default, so long as such Party promptly commences and diligently pursues such cure;
- (c) A Party fails to make when due any payment (other than amounts disputed in good faith) due and owing under this Agreement and such failure is not cured within five (5) Business Days after Notice of such failure;
- (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 following a Notice to cure from the Non-Defaulting Party;
- (e) 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;

- (f) With respect to Seller's Guarantor:
- (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 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 Agreement 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; or
  - (vi) The failure of the Guarantee and Support Agreement between Guarantor and its parent, Scottish Power PLC, dated December 12, 2005, to be in full force and effect until all obligations of Seller under this Agreement are fully satisfied.

*provided, however,* that Seller may cure any such Guarantor's default by providing to SCE either a substitute Guaranty Agreement from a Guarantor acceptable to SCE and meeting the qualifications of Section 8.02(c) or alternative Performance Assurance and meeting the requirements of Section 8.2(a) or 8.2(b) or otherwise acceptable to SCE (such acceptance in either case not to be unreasonably withheld, conditioned or delayed) and any guaranteed amount owed to SCE by the defaulting Guarantor, in each case on or before the tenth (10<sup>th</sup>) Business Day after SCE notifies Seller of Guarantor's default.

- (g) If at any time after the Final Configuration Date:
- (i) Seller does not own or control the Generating Facility or otherwise have the authority over the Generating Facility as required in Section 3.07(a); or

- (ii) Seller has not cured an Event of Default with respect to Section 3.07(a) within thirty (30) days after providing the written Notice in accordance with Section 3.07(b);

*Provided, however,* that Seller shall not be in default under this subsection if the loss of Site Control required Section 3.07(a) is caused by SCE's breach of any of its covenants, representations or warranties under the Wind Lease or Option Agreement; *provided further,* that Seller shall not be in default of this subsection if the Generation Facility is transferred to a permitted assignee of this Agreement under Section 10.04 simultaneously with the assignment.

- (h) With respect to Seller, excluding periods of Force Majeure, if at any time during the Term, the Metered Amounts plus Lost Output in any consecutive twelve (12) month period are not at least twenty percent (20%) of the Expected Annual Net Energy Production set forth in Special Condition A(v), and Seller fails to demonstrate to SCE's reasonable satisfaction, within ten (10) Business Days after Notice from SCE, a legitimate reason for Seller's failure to produce, Schedule and deliver such twenty percent (20%);
- (i) If at any time during the Term, Seller intentionally or knowingly delivers, Schedules, or attempts to deliver or Schedule at the Delivery Point for sale under this Agreement electric energy that was not in fact generated by the Generating Facility, except in the ordinary course of Scheduling where the Scheduled Amounts may exceed the Delivered Amounts in any given hour as permitted by and subject to Section 3.01;
- (j) If at any time during the Term, the Generating Facility consists of an ERR type(s) different than that specified in Special Condition A(iii) of this Agreement; provided, however, that an Event of Default shall not have occurred if the Generating Facility fails to qualify as an eligible renewable energy resource due to a change in the RPS Legislation or other Applicable Laws occurring after the Effective Date;
- (k) If at any time during the Term, either:
  - (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 if the failure to qualify results from an amendment or modification after the Effective Date of (x) the RPS Legislation or (y) other Applicable Laws directly impacting the Generating Facility's status as an ERR or the qualification of the Generating Facility's electrical output as output from an

ERR, and Seller has used commercially reasonable efforts under Section 3.16 to obtain CEC Certification;

- (l) If at any time during the Term, Seller, without SCE's prior consent in writing, installs Generating Facility Capacity on the Site in excess of the Nameplate Contract Capacity set forth in Special Condition A(iv) and attempts to sell the output of such excess capacity to SCE, and if such Generating Facility Capacity is not removed or such attempted sale halted within five (5) Business Days after Notice to cure from the Non-Defaulting Party;
- (m) If at any time during the Term, Seller, without SCE's prior consent in writing, removes from the Site equipment or Wind Turbines upon which the Nameplate Contract Capacity has been based, except for the purposes of replacement, refurbishment, repair or maintenance, and such equipment or Wind Turbines are not returned within five (5) Business Days after Notice from SCE;
- (n) If Seller fails to declare Initial Operation within the timeframes set forth in Section 2.03(b) and such failure is not cured within five (5) Business Days after Notice from SCE of such failure (provided that SCE's exclusive remedy for any such default shall be receipt and retention of the Development Fee as provided in this Agreement); or
- (o) 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 delivery of the electric energy to the Delivery Point, for Scheduling to SCE, or for metering the Metered Amounts (other than for, in the case of Seller, default by SCE or the Transmission Provider) and such service is not reinstated, or alternative arrangements implemented, within one hundred and twenty (120) days after such termination or cessation of service.
- (p) With respect to SCE, if SCE fails to comply with Section 2.02 with respect to CPUC Approval or CPUC Section 851 Approval and SCE does not cure such failure within thirty (30) days after receiving Notice from Seller.
- (q) With respect to SCE, if a default, where SCE is the defaulting party, under the Wind Lease or the Option Agreement has occurred and is continuing and Seller terminates either of those agreements in accordance with the terms and conditions thereof.
- (r) With respect to Seller, if a default, where Seller is the defaulting party, under the Wind Lease or the Option Agreement has occurred and is continuing and SCE terminates either of those agreements in accordance with the terms and conditions thereof.

**6.02 Early Termination.**

If an Event of Default shall have occurred, and not been cured within the applicable cure period set forth in Section 6.01, there will be no opportunity for cure except as specified in Section 6.01. The Party taking the default (the "Non-Defaulting Party") shall have the right:

- (a) To designate, by Notice, a day, no earlier than twenty (20) calendar days after the Notice is effective, as an "Early Termination Date;"
- (b) To immediately suspend performance under the Agreement; and
- (c) 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.

**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 (which shall include the Forward Settlement Amount plus, if Seller is the Non-Defaulting Party, damages attributable to any Production Tax Credits lost by Seller as a result of an Event of Default by SCE), less any amounts owed by the Non-Defaulting Party to the Defaulting Party (the "Termination Payment"). The Notice shall include a written statement setting forth, in reasonable detail, the calculation of such Termination Payment, the Forward Settlement Amount and any lost Production Tax Credits, 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 thirty (30) days after the Notice is provided.

Lost Production Tax Credits recoverable by Seller under this Section 6.03 are considered to be "direct actual damages" for purposes of Article Seven.

Under no circumstances will the Non-Defaulting Party be required to pay the Defaulting Party for any Gains projected to result to the Non-Defaulting Party after the Early Termination Date (e.g., if the Seller is the Non-Defaulting Party, the Seller will have no duty to account to SCE if Seller is able to re-sell Product at a higher price after a termination of the Agreement, and if SCE is the Non-Defaulting Party, SCE shall have no duty to account to Seller if SCE is able to purchase Product at a



lower price after a termination of the Agreement). The Parties shall negotiate in good faith to resolve any disputes regarding the calculation of the Termination Payment. Any disputes which the Parties are unable to resolve through negotiation within thirty (30) days of the Early Termination Date may be submitted for resolution through the dispute resolution procedure in Article Twelve.

Notwithstanding any other provision of this Agreement SCE's receipt of the Development Fee or portion thereof as required by this Agreement (and, if applicable, a reduction in the Nameplate Contract Capacity as provided in Section 3.04(d)), shall be SCE's exclusive remedy for Seller's failure to meet the Startup Deadline or to demonstrate the Nameplate Contract Capacity (including without limitation because of Seller's failure to meet a milestone).

#### 6.04 Consent to Collateral Assignment.

Subject to the provisions of this Section 6.04, Seller shall have the right to assign this Agreement as collateral for financing or refinancing of the Generating Facility. In connection with any financing or refinancing of the Generating Facility by Seller, SCE shall in good faith work with Seller and Lender to agree upon a consent to collateral assignment of this Agreement ("Collateral Assignment Agreement"). The Collateral Assignment Agreement shall contain commercially reasonable terms, shall be in form and substance agreed to by SCE, Seller and Lender, and shall include, among others, provisions in form and substance satisfactory SCE, Seller and Lender with respect to the following matters:

- (a) SCE shall give written Notice of the Event of Default to Lender, to the person(s) to be specified in the Collateral Assignment Agreement, prior to exercising its right to terminate this Agreement as a result of any alleged Event of Default by Seller.
- (b) 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) impediments to the cure plan or its development, (iii) 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 (iv) 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) Days of 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.
- (c) Lender shall have the right, in the case of an Event of Default by Seller under the Agreement, to cure such Event of Default in accordance with the

provisions of the Agreement and the Collateral Assignment Agreement. Lender must remedy or cure the Event of Default within the cure period and in a manner applicable to Seller under the Agreement and the Collateral Assignment Agreement; provided that the Collateral Assignment Agreement will provide that if Lender sends a written Notice to SCE prior to the end of any cure period indicating Lender's intention to cure, such cure period shall be extended to at least thirty (30) days for monetary defaults and at least ninety (90) days for non-monetary defaults.

- (d) Lender shall receive prior notice of, and the right to approve material amendments to this Agreement, which approval shall not be unreasonably withheld, conditioned or delayed.
- (e) 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 or its designee shall assume all of Seller's obligations 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 or such designee 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 but shall be obligated to cure (or cause to be cured) any Event of Default existing as of the assumption date in order to avoid the exercise by SCE (in its sole discretion) of SCE's rights under the Agreement in respect of an Event of Default, including, without limitation, SCE's right to terminate the Agreement.

In the event 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 (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 the transferee or buyer shall have no personal liability for any monetary damages of Seller under the Agreement which are due and owing to SCE as of the assumption date. Such sale or transfer may be made only to an entity with operating experience satisfactory to SCE in its reasonable discretion and that meets or exceeds the Credit Rating requirement set forth in Section 8.02(c) (or, if it does not meet such requirement, that posts collateral support and any other additional security as may be reasonably required by SCE).

- (f) In the event that this Agreement is rejected in Seller's Bankruptcy case or otherwise terminated in connection therewith and if such 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 promptly enter into, or cause a receiver or project company (as the case may be), to promptly enter into a new agreement with SCE having substantially the same terms as this Agreement. Notwithstanding the foregoing, SCE shall not be required to enter into such agreement with Lender or receiver or project company (as the case may be) if there has been a change in circumstances resulting from actions of Seller in its Bankruptcy case that would, in SCE's reasonable judgment, materially impact the rights or obligations of SCE under such an agreement.

In connection with the closing of financing or refinancing and the delivery of the Collateral Assignment Agreement, SCE and Seller shall each provide an opinion or opinions of its counsel (which may include in-house counsel) in form reasonably satisfactory to the Lender, Seller and SCE confirming the due authorization and enforceability of this Agreement and the Collateral Assignment Agreement.

**6.05 Institutional Investor Agreement.**

In connection with any investment by an Institutional Investor in Seller, SCE shall at Seller's request and in good faith work with Seller and Institutional Investor to agree upon an agreement governing rights of the Institutional Investor ("Institutional Investor Agreement"). The Institutional Investor Agreement shall contain commercially reasonable terms, shall be in form and substance agreed to by SCE, Seller and Institutional Investor, and shall include, among others, provisions with respect to the following matters:

- (a) Prior to exercising any right to terminate this Agreement as a result of any alleged Event of Default by Seller, SCE shall give written Notice of such Event of Default to Institutional Investor.
- (b) Following an Event of Default by Seller under this Agreement, SCE may require Seller to provide to SCE a report concerning (i) the status of efforts by Seller to develop a plan to cure the Event of Default, (ii) impediments to the cure plan or its development, (iii) 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 (iv) any other information which SCE may reasonably require related to the development, implementation and timetable of the cure plan. Seller shall provide the report to SCE within ten (10) Days of 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.
- (c) Institutional Investor shall have the right, in the case of an Event of Default by Seller under the Agreement, to cure such Event of Default in accordance with the provisions of the Agreement and the Institutional Investor Agreement. Institutional Investor must remedy or cure the Event of Default within the cure period and in a manner applicable to Seller under the Agreement and the Institutional Investor Agreement; provided that the Institutional Investor Agreement will provide that if Institutional Investor sends a written Notice to SCE prior to the end of any cure period indicating Institutional Investor's intention to cure, such cure period shall be extended to at least thirty (30) days for monetary defaults and at least ninety (90) days for non-monetary defaults.
- (d) Institutional Investor shall receive prior notice of, and the right to approve material amendments to this Agreement, which approval shall not be unreasonably withheld, conditioned or delayed.

In connection with the closing of the Institutional Investor's investment in Seller and the execution and delivery of the Institutional Investor Agreement, SCE and Seller shall each provide an opinion or opinions of its counsel (which may include in-house

counsel) in form reasonably satisfactory to the Institutional Investor, Seller and SCE confirming the due authorization by SCE of this Agreement and the enforceability of this Agreement against SCE in accordance with its terms, and confirming the due authorization by SCE of the Institutional Investor Agreement and the enforceability of the Institutional Investor Agreement against SCE in accordance with its terms. Seller shall be responsible for all reasonable costs incurred by SCE and associated with SCE's delivery of such opinion or opinions.

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*\*\*\* End of ARTICLE SIX \*\*\**

**ARTICLE SEVEN. LIMITATIONS OF LIABILITIES**

EXCEPT AS SET FORTH HEREIN, THERE IS NO 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, 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.

TO THE EXTENT IT IS APPLICABLE TO THE LIMITATIONS SET FORTH IN THIS ARTICLE 7, THE PARTIES HEREBY WAIVE CAL CIV CODE SEC 1542. NOTWITHSTANDING THE FOREGOING, THE VALUE OF ANY PRODUCTION TAX CREDITS AS DETERMINED ON AN AFTER-TAX BASIS LOST AS A RESULT OF

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SCE'S DEFAULT SHALL BE DEEMED DIRECT AND NOT CONSEQUENTIAL DAMAGES.

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

*The contents of this document are subject to a Non-Disclosure Agreement and shall not be disclosed.*

**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;
- (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.

Notwithstanding the foregoing, during any period in which a guaranty is provided by Seller's Guarantor, Seller shall not be required to provide its financial statements under Sections 8.01(a) and 8.01(b) and shall provide the corresponding financial statements of Guarantor, if any, in lieu thereof. SCE shall keep any and all such financial statements confidential pursuant to the Non-Disclosure Agreement between the Parties and Section 10.08 of this Agreement. SCE acknowledges that Scottish Power Finance (US), Inc., does not expect to prepare financial statements. Scottish Power Finance (US) will be supported by a guaranty from Scottish Power plc, which is a publicly traded company.

In all cases the statements shall be for the most recent accounting period and prepared in accordance with generally accepted accounting principles; provided, however, 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) On or before the commencement of the Term, Seller shall post Performance Assurance with SCE. Subject to Section 8.02(d), 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 one year following the end of the Term. The Performance Assurance amount due to SCE by Seller shall be as set forth in Special Condition E and shall be either in the form of cash or Letter of Credit acceptable to SCE in its reasonable discretion, or guaranty in the form attached to this Agreement; provided that on the commencement of the Term, if Seller has posted the Development Fee in the form of cash or a Letter of Credit and SCE has not either returned the Development Fee to Seller or given Seller Notice, pursuant to Exhibit K, of its determination



regarding the disposition of the Development Fee by such date, then Seller may withhold the portion of the Performance Assurance Amount equal to the Development Fee held by SCE until three (3) Business Days following the later of Seller's receipt or forfeiture of the Development Fee or any portion thereof pursuant to Section 3.04 or SCE's Notice to Seller pursuant to Exhibit K of its determination regarding the disposition of the Development Fee. SCE, in its reasonable discretion, may accept a Guaranty Agreement from a Guarantor acceptable to SCE to satisfy the Seller's Performance Assurance obligation in lieu of cash or a Letter of Credit as set forth in Section 8.02(c). The Guarantor identified in Special Condition F is acceptable to SCE.

- (b) 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 twenty (20) Business Days prior to the expiration of the outstanding Letter of Credit; and
    - (3) If a 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;
  - (ii) As one method of providing Performance Assurance, Seller may establish one or more Letters of Credit;
  - (iii) Upon the occurrence of a Letter of Credit Default, Seller agrees to provide to SCE either a substitute Letter of Credit or alternative Performance Assurance meeting the requirements of Section 8.2(a) or 8.2(b) or otherwise acceptable to SCE, in each case on or before the first Business Day after the occurrence thereof (or the tenth (10<sup>th</sup>) Business Day after the Seller receives Notice of occurrence thereof if only Section 1.79(a) applies);

- (iv) Upon, or at any time after, the occurrence and continuation of an Event of Default with respect to the Seller, or if an Early Termination Date has occurred or been designated as a result of an Event of Default with respect to the Seller for which there exist any unsatisfied payment obligations, then SCE may draw on any outstanding Letter of Credit upon 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 may be applied by SCE to any amounts owed to SCE by Seller at the time of the drawing. Notwithstanding any other provision of this Agreement, Seller shall have no duty to replenish, replace, or reinstate the Letter of Credit to the extent drawn down (even if completely drawn down). Seller shall remain liable for any failure to provide the required amount of Performance Assurance or for any amounts owing to SCE and remaining unpaid after the application of the amounts so drawn; and
  - (v) 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.
- (c) If Seller's Performance Assurance obligation is satisfied by a Guaranty Agreement, it shall be in the form of Exhibit H executed by the Guarantor identified in Special Condition F or other party reasonably acceptable to SCE meeting the Credit Rating requirements for the 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 an acceptable Guarantor, within ten (10) Business Days.

- (d) Notwithstanding any other provision of this Agreement, Seller shall have no duty to replenish, replace or reinstate Performance Assurance to the extent monetary proceeds of such Performance Assurance are paid to SCE except to the extent that SCE is required to return any or all of such proceeds due to bankruptcy or insolvency laws or otherwise, in which case Seller shall be obligated to replace or reinstate the Performance Assurance to such extent.

8.03 Grant of SCE's First Priority Security Interest in Cash or Cash Equivalent Collateral and Related Remedies.

To secure its obligations under this Agreement, Seller hereby grants to SCE a present and continuing first-priority security interest ("Security Interest") in, and lien on (and right of setoff against), and assignment of, all cash collateral and cash equivalent collateral 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 of setoff against), such collateral and any and all proceeds resulting therefrom 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) Exercise its rights of setoff against any and all property of Seller in SCE's possession;
- (c) Draw on any outstanding Letter of Credit issued for its benefit; and
- (d) 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's remaining 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.

If Seller proposes to post cash or cash equivalents as Performance Assurance, it shall deposit such amounts with an escrow agent on behalf of SCE pursuant to a deposit escrow agreement in form acceptable to SCE (with SCE's approval not to be unreasonably withheld, conditioned or delayed). The deposit escrow agreement shall grant SCE a first-priority security interest, lien and right of set off in the cash or cash equivalent collateral as provided above. The cash or cash equivalent collateral would be invested by the escrow agent in investments permitted by the terms of the approved deposit escrow agreement. Under the terms of the deposit escrow agreement, and as long as Seller is not in default under this Agreement, investment earnings on the cash or cash equivalent collateral shall be payable to Seller on ten (10) Business Days Notice from Seller to the agent (with a copy to SCE). If Seller is in default under this Agreement, earnings on the cash or cash equivalent collateral

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shall continue to accrue on the cash or cash equivalent collateral but shall not be distributed to Seller unless and until the default is cured.

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

*The contents of this document are subject to a Non-Disclosure Agreement and shall not be disclosed.*

**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 Amount) and the Scheduled 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; provided, however, that SCE shall continue to be responsible for any taxes or portion thereof that it has agreed to bear under the Wind Lease Agreement or the Option Agreement. SCE shall pay or cause to be paid all Governmental Charges on or with respect to the Scheduled 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.

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\*\*\* 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) It has or will use commercially reasonable efforts to timely acquire all regulatory authorizations necessary for it to legally perform its obligations under this Agreement (provided the Parties acknowledge and agree that CPUC Approval, in the case of SCE, and all permits and agreements necessary to install, interconnect and Operate the Generating Facility, in the case of Seller, remain to be obtained in accordance with the terms and conditions of 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 any of its Affiliates in the case of Seller) 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. It has not relied upon any promises, representations, statements or information of any kind whatsoever that is not contained in this Agreement in deciding to enter into this Agreement; and
- (h) 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.

## 10.02 Additional Warranties and Covenants.

- (a) Seller warrants that it will deliver to SCE the Product as contemplated by this Agreement free and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto by any person.
- (b) Seller represents and warrants that it holds the rights to all Environmental Attributes, Resource Adequacy Benefits and Capacity Attributes, if any, associated with the Generating Facility and that it has not and shall not transfer any Environmental Attributes, Resource Adequacy Benefits or Capacity Attributes associated with the Generating Facility 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 represents and warrants that the Guarantee and Support Agreement between Guarantor and Scottish Power PLC dated December 12, 2005, is and will remain in full force and effect until (i) all obligations of Seller under this Agreement are fully satisfied, or (ii) Seller has posted either a substitute Guaranty Agreement from a Guarantor acceptable to SCE and meeting the qualifications of Section 8.02(c) or alternative Performance Assurance meeting the requirements of Section 8.2(a) or 8.2(b) or otherwise acceptable to SCE (such acceptance in either case not to be unreasonably withheld, conditioned or delayed).

## 10.03 Indemnity.

- (a) Each Party as indemnitor shall defend, save 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 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 to the extent resulting from its negligence or willful misconduct.

- (b) Each Party releases and shall defend, save 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(e), 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 10.09, Seller shall, at its own cost, defend, save 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 10.09.

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 10.09.

- (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) All indemnity rights shall survive the termination of this Agreement for twelve (12) months.

#### 10.04 Assignment.

Except as provided in Section 6.04, neither Party shall voluntarily assign its rights nor delegate its duties under this Agreement, or any part of such rights or duties, without the written consent of the other Party, which shall not be unreasonably withheld, conditioned or delayed. Any such assignment or delegation made without such written consent shall be null and void.

#### 10.05 Governing Law.

The contents of this document are subject to a Non-Disclosure Agreement and shall not be disclosed.



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.

#### 10.06 Notices.

All notices, requests, statements or payments shall be made as specified in Exhibit B. 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. Notice by facsimile or hand delivery shall be effective at the close of business on the day actually received, if received during business hours on a Business Day, and otherwise shall be effective at the close of business on the next Business Day, unless a different date for the Notice to go into effect is stated in another section of this Agreement. Notice by overnight United States mail or courier shall be effective on the next Business Day after it was sent. A Party may change its designated representatives, addresses and other contact information by providing notice of same in accordance herewith. All notices, requests, statements or payments for this Generating Facility must reference the QFID number set forth on the title page to this Agreement.

#### 10.07 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) 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).
- (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.
- (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) 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.
- (n) So long as Seller uses commercially reasonable efforts to obtain CEC Certification, changes after the Effective Date in (i) the RPS Legislation, or (ii) other Applicable Laws that directly impact the status of the Generating Facility as an ERR or the status of Environmental Attributes, Resource Adequacy Benefits or Capacity Attributes shall not relieve SCE of the duty to continue to take and pay for Scheduled Energy, Capacity Attributes, Resource Adequacy Benefits and Environmental Attributes as provided by this Agreement; provided, however, that the term "commercially reasonable efforts" in this Agreement shall not require Seller to pay or incur additional costs beyond that provided in Section 3.16(b).
- (o) SCE has assigned a "QFID" number to this Agreement for tracking purposes only, and SCE is not requiring that the Generating Facility be a "qualifying facility" for purposes of state or federal law.

#### 10.08 Confidentiality.

The Parties shall be subject to the Non-Disclosure Agreement between SCE and PPM Energy, Inc., as amended by that certain letter agreement dated June 22, 2006 between the Parties (collectively, the "NDA"), attached hereto as Exhibit I, subject to the following modifications acknowledged and agreed to by the Parties:

- (a) The term "Confidential Information" as used in the NDA shall be deemed to include (in addition to the information described in the NDA) (i) 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, and (ii) all financial information received by SCE from Seller or its Affiliates with respect to this Agreement;
- (b) In addition to the disclosures permitted under Section 3 of the NDA but subject to Section 5 of the NDA, SCE may also disclose Confidential Information to:
  - (i) FERC to the extent required by FERC or under Applicable Laws and shall use reasonable efforts to secure confidential treatment of any Confidential Information in such proceedings; and
  - (ii) Representatives of SCE's rating agencies who have a strict need to know solely for the purpose of assisting SCE in evaluating the Agreement for accounting purposes in respect to the potential impact of the Agreement on SCE's financial reporting obligations so long as SCE advises each such rating agency of the confidential nature of the Agreement, and SCE uses reasonable efforts to preserve the confidentiality of the Agreement; provided, however, that in this case the Confidential Information disclosed shall consist only of the Agreement and shall not include other Confidential Information (such as nonpublic financial information about Seller's guarantor)..
- (c) Confidential Information may only be used for the purposes set forth under the NDA and for the purpose of implementing and enforcing this Agreement; and
- (d) The termination date of the NDA is modified such that it will terminate on the later of:
  - (i) The termination date set forth in the NDA; or
  - (ii) One year after the date of termination of this Agreement.
- (e) Without limiting the provisions of this Section 10.08, SCE shall agree to treat nonpublic financial information received from Scottish Power Finance (US),

Inc., or any of its Affiliates, as confidential information supplied by Seller pursuant to the NDA and the other provisions of this Section 10.08 governing confidential information supplied by Seller. Scottish Power Finance (US), Inc., and any Affiliates thereof that provide financial information to SCE pursuant to this Agreement or the attached guaranty shall be a third party beneficiary of this Section 10.08 for purposes of enforcing this Section 10.08 with respect to such person's confidential information.

- (f) Seller shall have the same rights and obligations as PPM under the NDA.

#### 10.09 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 \$2,000,000 for each occurrence. 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, conditioned 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."

## 10.10 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.

## 10.11 Mobile Sierra.

Notwithstanding any provision in this Agreement, neither Party shall seek, nor shall 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 the 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 service 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).

## 10.12 Payment.

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

## 10.13 Interest.

Except as specifically provided in this Agreement, any past due amounts owing by either Party under the terms of this Agreement shall bear interest at the Interest Rate from the date due until payment is made.

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\*\*\* 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 Term Quarter, 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. In making a decision, the Arbitrator may require the Parties to make only those changes to the Agreement as are in accord with the principles set forth in the preceding grammatical paragraph.

To the extent that any ISO Change Costs cannot be eliminated by changes made pursuant to this Section 11.01, they shall continue to be treated as ISO Change Costs and shall be addressed pursuant to the other provisions of this Article Eleven.

A change in cost shall not in itself be deemed to:

- (a) Render the Agreement or any terms therein incapable of being performed or administered,
- (b) 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.

Hereinafter, the total of net incremental changes in:

- (i) ISO charges to Seller; and

- (ii) Seller's Actual Revenue, for any Term Quarter 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:"
- (1) Upon the occurrence of congestion on the transmission system, the allocation of available transmission capacity among generators including Seller, impacting Seller's Scheduled Amounts and congestion charges to Seller resulting therefrom;
  - (2) 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 Scheduled Amounts resulting from the assessment of transmission losses thereto; and
  - (3) Changes in, or elimination of, the Participating Intermittent Resource Program (including, but not limited to, changes to PIRP rules that would result in increased imbalance charges as a direct result of such change).

The procedure for determining an ISO Change Cost is described in Exhibit M. In the event of an inconsistency between this Section 11.02 and Exhibit M concerning the determination of an ISO Change Cost or ISO Change Cost Payment, Exhibit M shall govern.

(b) ISO Change Cost Payment.

It is the intent of the Parties that Seller shall be reimbursed by SCE by 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 SCE shall be paid by Seller by the amount of the ISO Change Cost above the ISO Change Cost Threshold Amount if the ISO Change Cost has been a saving to Seller (collectively the "ISO Change Cost Payment"). The procedure for calculating the total of net incremental Change in ISO charges to Seller or Seller's Actual Revenue during any Term Quarter 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 M. The procedure for addressing disputes related to an ISO Change Cost determination is set forth in Section 11.03 below.

In addition, it is the intent of the Parties that SCE be afforded certain rights after a Change in ISO Tariff to mitigate ISO Change Costs under Section 11.02(a)(ii)(1) and (2). These mitigation rights, the circumstances in which rights may be exercised, and the procedure for exercising such rights are set forth in Section 11.04.

The Parties further intend that a Change in ISO Tariff defined in Section 11.02(a)(ii)(3) will give rise to the mitigation described in Section 11.05.

## 11.03 Procedure for Claiming an ISO Change Cost Payment.

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

Subject to an Annual True-Up as set forth in Section 11.03(d), if either Party believes that it is owed an ISO Change Cost Payment for any Term Quarter, it shall, on or before the sixtieth (60th) day after the end of the Term Quarter, provide Notice to the other Party of its claim for the ISO Change Cost Payment (provided, however, that ISO Change Cost Payments for the final Term Quarter in a Term Year shall be addressed as part of the Annual True Up under Section 11.03(d)). Such a Notice must include the Party's explanation for its claim that a Change in ISO Tariff has occurred, the Party's calculation supporting its ISO Change Cost Payment claim in accordance with Exhibit M, and annotated workpapers and source data supporting the Party's calculation.

### (b) Payment of Claim.

Within forty-five (45) days from the date Notice of an ISO Change Cost Payment is provided pursuant to this Section 11.03, a Party receiving a claim for an ISO Change Cost Payment shall either:

- (i) Pay the claim; or
- (ii) Provide Notice to the claiming Party that it disputes the claim and pay any portion of the claim which it does not dispute. The Party's Notice that it disputes the claim shall set forth in detail the reason for its dispute, and shall include the disputing Party's calculation of the ISO Change Cost and any ISO Change Cost Payment in accordance with Exhibit M as well as annotated workpapers and source data supporting the disputing Party's calculations.

### (c) Disputed Claims.

The Parties shall negotiate in good faith to resolve any dispute regarding a claim for the ISO Change Cost Payment and shall, as part of such good faith negotiations, promptly provide information or data relevant to the dispute as they each may possess which is requested by the other Party. Such information may be provided pursuant either to the Non-Disclosure Agreement attached at Exhibit I or to such other agreement that the Parties



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

If the Parties are unable to resolve a dispute regarding a claim for the ISO Change Cost Payment within forty-five (45) days of the sending of Notice by the disputing Party pursuant to this Section 11.03, either Party may submit the dispute to arbitration as provided in Article Twelve. Disputed payments that are ultimately determined to be due shall bear interest at the Interest Rate from the date due until paid.

(d) Annual True-Up.

On or before the sixtieth (60th) day of each Term Year, if either Party believes that it is owed an ISO Change Cost Payment for the prior Term Year taking into account the sum of the ISO Change Cost Payments actually made to a Party for the first three (3) quarters of the prior Term Year, then it shall provide Notice to the other Party of its claim for ISO Change Cost Payment. Such Notice must include the Party's explanation for its claim that a Change in ISO Tariff has occurred, the Party's calculation supporting its ISO Change Cost Payment claim in accordance with Exhibit M, and annotated workpapers and source data supporting the Party's calculation together with its calculation of the ISO Change Cost Threshold Amount for the prior Term Year and the total of all ISO Change Costs for the first three (3) quarters of the prior Term Year. The Party's calculation shall also account for the effect of any information that is available when the annual calculation is made but that was not available at the time that the quarterly ISO Change Cost Payments were made, such as:

- (i) Changes to Metered Amounts under Section 4.03(c) for the prior Term Year;
- (ii) ISO settlement, audit or other information for the prior Term Year; or
- (iii) Other information affecting the accurate calculation of ISO Change Costs.

If the sum of the ISO Change Cost Payments actually made to a Party for the first three (3) quarters of the prior Term Year exceeds the total ISO Change Cost Payment calculated for the prior Term Year, the Party that received the excess ISO Change Cost Payments shall owe the other Party for the amount of such excess. If the sum of the quarterly ISO Change Cost Payments actually made to a Party during the prior Term Year is less than the total ISO Change Cost Payment payable to that Party for the prior Term Year, the Party entitled to receive the ISO Change Cost Payments shall be owed an amount equal to the shortfall.

The Party receiving a Notice as set forth above shall either pay the claim or dispute the claim in accordance with the procedures set forth in Sections 11.03(b) and (c). The undisputed portion of any claim shall be paid as provided in Section 11.03(b).

## 11.04 Mitigation Rights.

### (a) Mitigation Rights.

After a Change in ISO Tariff of the type contemplated by Section 11.02(a)(ii)(1) or (2), SCE shall have the rights (individually, or in any combination, the "SCE Mitigation Rights"), subject to the limitations set forth below in Section 11.04(b) to:

- (i) Make any decisions regarding Seller's bids into ISO-administered markets in order to:
  - (1) Minimize SCE cost exposure to any ISO Change Cost Payment to Seller with respect to this Article 11 and Exhibit M;
  - (2) If applicable, minimize Seller's cost impact with respect to Article 11 and Exhibit M,

which decision-making right shall become effective upon SCE providing to Seller three (3) Business Days Notice, *provided however* that it is the intent of the Parties that:

- (3) Any reduction in Seller's Metered Amounts resulting from SCE's exercise of its Mitigation Rights shall be treated as Lost Output for purposes of calculating Seller's Energy Delivery Obligation and Warranty Availability Lost Production.
- (4) Without limiting SCE's right to its decision-making rights as set forth in this subparagraph (i) or SCE's right to become Seller's Scheduling Coordinator within the forty-five (45) day period set forth in subparagraph (ii) below, SCE shall make reasonable efforts as set forth in Section 11.04(d) to consult with Seller to agree upon measures that would satisfy SCE's concerns and cause it to withdraw its election to make decisions regarding Seller's bids into ISO-administered markets or to become Seller's Schedule Coordinator; and
- (5) SCE shall not exercise its decision-making right in a manner that causes Seller to experience any adverse financial effect in excess of the ISO Change Cost Threshold Amount as a direct

result of SCE exercising such decision-making rights for which Seller shall not be compensated under Section 11.02.

- (ii) If SCE is not satisfied that its bids or bidding strategy are being implemented by Seller in a cost effective manner in accordance with SCE's instructions (other than for reasons of Force Majeure) or that it can effectively minimize SCE's cost exposure as provided in Section 11.04(a)(i), SCE may elect to become Seller's Scheduling Coordinator in replacement of any entity providing Scheduling Coordinator services for Seller, which Scheduling Coordinator change shall become effective upon SCE providing to Seller forty-five (45) days Notice.

(b) Limitations to Exercising Mitigation Rights.

SCE may exercise the SCE Mitigation Rights if, in addition to a Change in ISO Tariff, any of the following occurs:

- (i) SCE makes an ISO Change Cost Payment to Seller for any Term Year in excess of fifty thousand dollars (\$50,000) and the Notice of exercise of SCE's Mitigation Rights pursuant to Section 11.04(a) is provided within one hundred twenty (120) days from the date of such ISO Change Cost Payment;
- (ii) If SCE forecasts that it will be required to make an ISO Change Cost Payment to Seller for any Term Year in excess of seventy-five thousand dollars (\$75,000); or
- (iii) If SCE forecasts that it will be required to make an ISO Change Cost Payment to Seller for any Term Year in excess of fifty thousand dollars (\$50,000), and PIRP has been eliminated or materially modified and there is no successor program to PIRP that is substantially equivalent to PIRP acceptable to both Parties.

(c) Procedures for Exercising Mitigation Rights.

Any Notice of SCE's exercise of the SCE Mitigation Rights shall set forth the basis for SCE's determination that one or more of the circumstances set forth in Section 11.04(b) has occurred, including SCE's calculation of any forecast ISO Change Cost Payment, along with annotated workpapers and source data supporting SCE's calculation.

If SCE provides Notice that it is exercising the SCE Mitigation Rights to become Seller's Scheduling Coordinator:

- (i) SCE shall reimburse Seller for any cost or liability to Seller up to a maximum amount of twenty five thousand dollars (\$25,000):
    - (i) associated with the termination of Seller's arrangement with its then-existing Scheduling Coordinator, or (ii) representing Seller's sunk costs if Seller is acting as its own Scheduling Coordinator;
  - (ii) The Parties shall promptly enter into a Scheduling Coordinator agreement containing substantially similar terms and conditions as those in effect between Seller and its Scheduling Coordinator and, if Seller is acting as its own Scheduling Coordinator, those terms and conditions that would be expected based on standard industry practice between Seller and a third party Scheduling Coordinator (provided that Seller shall have no duty to pay SCE a fee for providing Scheduling Coordinator services);
  - (iii) Seller shall pay SCE for ISO PIRP Charges or, if PIRP has been eliminated for charges equivalent to those that it would have paid under PIRP, provided that such costs are not included in other ISO charges which are being paid by Seller;
  - (iv) Upon becoming Seller's Scheduling Coordinator, SCE shall assume and be responsible for all reporting obligations set forth in Exhibit C for which a Scheduling Coordinator would ordinarily be responsible; and
  - (v) Upon becoming Seller's Scheduling Coordinator, SCE shall assume and be responsible for abiding by any ISO enforcement protocol (including any related penalties, as long as Seller provides Generating Facility outage information in a timely manner).
- (d) Restoration to Seller of SCE's Election to Exercise Mitigation Rights.
- (i) SCE shall make reasonable efforts to consult with Seller to agree upon measures that would satisfy SCE's concerns and cause it to withdraw its election to make decisions regarding Seller's bids into ISO-administered markets or to become Seller's Schedule Coordinator.
  - (ii) If the circumstances that cause SCE to reasonably forecast an ISO Change Cost Payment to Seller, in any Term Year no longer exist (or the Parties have agreed to a structure that would reasonably be expected to eliminate an ISO Change Cost Payment above the ISO Change Cost Threshold), then the Parties shall negotiate in good faith to restore to Seller Seller's right to make decisions regarding bids into ISO-administered markets or for Seller to select or become its own Scheduling Coordinator.

11.05 Changes In, or Elimination of, PIRP.

(a) Computer Model or Third Party Forecasts.

(i) If the Participating Intermittent Resource Program is eliminated and is not replaced by a substantially similar successor program, then the Party responsible for Scheduling shall, no later than thirty (30) days after such elimination propose by Notice to the other Party the following:

- (1) A computer model (approved as provided below) in Section 11.05(a)(iii) pursuant to which the Scheduling Coordinator shall Schedule electric energy from the Generating Facility under this Agreement; or
- (2) An independent third party (approved as provided below in Section 11.05(a)(iii) that shall provide to Seller non-binding day-ahead forecasts and binding hourly forecasts pursuant to which Seller shall schedule electric energy from the Generating Facility under this Agreement.

*Provided, however,* that if the Party responsible for Scheduling does not propose such a model or independent third party by the end of the thirty (30) day period, Seller may propose a computer model or independent third party.

- (ii) If the entity responsible for Scheduling elects to permanently opt out of PIRP, then, prior to taking such action, the Party responsible for Scheduling shall propose by Notice to the other Party a computer model or independent third party forecaster as described in Sections 11.05(a)(i)(1) and 11.05(a)(i)(2).
- (iii) Any computer model (including input data sources) and any independent third party proposed under Section 11.05(a)(i) or (ii) shall be subject to the approval of the Party receiving the proposal (which such receiving Party shall not unreasonably withhold or condition). The Party receiving the proposal shall have fifteen (15) days from the date on which the other Party proposes the computer model or independent third party in which to provide Notice to the proposing Party stating the receiving Party's reasons for any disapproval. If the receiving Party does not disapprove by Notice within the fifteen (15) day period, it shall be deemed to have approved the proposed computer model (including input data sources) or the proposed independent third party. If the receiving Party disapproves of the proposal, the Parties shall negotiate in good faith for a further fifteen

(15) days. If the Parties are unable to reach agreement by the end of the fifteen (15) day period, then the proposing Party shall implement the propose model or independent third party and objecting Party may submit the matter to arbitration under Article Twelve. The Arbitrator may approve the proposed model or independent third party or decide upon such other changes to the model or the independent third party as are appropriate to:

- (1) Cause the output of the Generating Facility to be predicted with reasonable accuracy for Scheduling purposes;
- (2) Minimize SCE cost exposure to any ISO Change Cost Payment to Seller with respect to this Article 11 and Exhibit M; and
- (3) If applicable, minimize Seller's cost impact with respect to Article 11 and Exhibit M.

(b) Changes to Model or to Independent Third Party.

- (i) Upon the occurrence of an inaccuracy in the model or defect in performance of the third party, the Parties shall promptly meet to discuss methods of avoiding the inaccuracy or defective performance in the future.
- (ii) In addition, if either Party is being harmed by the inaccurate operation of the approved computer model or by defects in the performance of the independent third Party, the affected Party may by Notice to the other Party propose changes to the computer model (including approved input data sources) or a change to the third party. If a Party does so, the other Party shall have fifteen (15) days in which to approve the proposed change (which approval shall not to be unreasonably withheld or conditioned). If a Party disapproves of the proposed change, the Parties shall negotiate in good faith for a further fifteen (15) days. If the Parties are unable to each agreement by the end of the fifteen (15) day period, either Party may submit the matter to arbitration under Article Twelve.

(c) Scheduling.

If a computer model is selected, SCE shall Schedule electric energy from the Generating Facility in accordance with the computer model (including approved input data sources). If a third party is selected, SCE shall Schedule electrical energy from the Generating Facility in accordance with the binding hour-ahead schedule provided by the independent third party.

(d) ISO Change Costs.

Notwithstanding the approval or disagreement of a computer model or independent third party, the Parties shall continue to allocate any ISO Change Costs in accordance with Section 11.02.

---

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

**ARTICLE TWELVE. ARBITRATION**

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 which disputes, claims or controversies the Parties have been unable to resolve by informal methods after undertaking a good faith effort to do so, shall be submitted for final and binding arbitration under the procedures described in this section. The arbitration shall be initiated by making a written demand for binding arbitration before a single, neutral arbitrator (the "Arbitrator") which may be made at any time following the unsuccessful conclusion of informal good faith dispute resolution efforts, including those informal good faith resolution efforts required by Special Condition A(v) and Sections 3.04(b), 3.18(c), 4.03(e), 6.03, 11.01, 11.03(c), 11.05(a)(iii), and 11.05(b)(ii).

The Parties will cooperate with one another in promptly selecting the Arbitrator and shall further cooperate in scheduling the arbitration to commence no later than ninety (90) days from the date of the initial written demand for binding arbitration. 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.

Upon a Party's written demand for binding arbitration, such dispute, claim or controversy 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 regards to principles of conflicts of laws.

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.*

However, 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.

In addition, to the extent that the arbitration is conducted in accordance with the California Arbitration Act, the Parties hereby incorporate Section 1283.05 of the California Code of Civil Procedure.

Except for disputes where the amount in controversy is greater than \$1,000,000 or where the dispute arises under Article VI, (a) all direct testimony in the arbitration shall be submitted in the form of affidavits or declarations under penalty of perjury, and (b) each side in the arbitration shall be entitled to take a maximum of three depositions. Each Party shall



# Southern California Edison

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*QFID# 6305, Dillon Wind LLC*

cooperate in making available for cross-examination at the arbitration hearing its witnesses whose direct testimony has been so submitted.

Judgment on the award may be entered in any court having jurisdiction.

The Arbitrator shall, in any award, 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, 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.

---

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

**Southern California Edison**

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*QFID# 6305, Dillon Wind LLC*

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

**DILLON WIND LLC,**  
an Oregon limited liability company

**SOUTHERN CALIFORNIA EDISON  
COMPANY,** a California corporation

*FD*  
*CLM*  
By: *Terry E. Hudgens*  
Terry E. Hudgens  
CEO/President

By: *Pedro J. Pizarro*  
Pedro J. Pizarro  
Senior Vice President of Power  
Procurement

Date: 08/04/2006

Date: 8/16/2006

APPROVED  
STEPHEN E. PICKETT  
Sr. Vice President and  
General Counsel  
By: *Steve Pickett*  
July 31, 2006 Attorney

**EXHIBIT A**

**GENERATING FACILITY AND SITE DESCRIPTION**

1. **GENERATING FACILITY.**

**WIND TURBINES**

The Generating Facility will consist of an array of wind turbine generators. Each Wind Turbine will include:

- (a) Single speed asynchronous induction generator;
- (b) Gearbox;
- (c) Variable pitch, three bladed hub and rotor assembly;
- (d) On-board microprocessor controller;
- (e) Tubular steel tower; and
- (f) Meteorological station.

Three-phase electric energy will be generated at 600 volts and transmitted through low voltage power cables to pad-mounted 600volt/34.5kV step-up transformers located at the base of each Wind Turbine tower. The high side of each pad-mounted transformer will be connected through underground cables to a substation that will interconnect the Generating Facility with the Transmission Provider's electric system.

The Generating Facility will be equipped with a computerized Supervisory Control and Data Acquisition ("SCADA") system which will be connected to each Wind Turbine controller. The SCADA system will allow operators in the control room to remotely operate each individual Wind Turbine and to monitor the output of the Generating Facility as a whole. It will be also gather, archive, and report data from each Wind Turbine generator and for each Wind Turbine meteorological station. The Wind Turbines will be self starting and will be started and stopped remotely via SCADA system.

Wind Turbine towers will be accessed by a network of compacted gravel access roadways.

**Site Plan**

Seller proposes to develop a wind power project on the SCE property defined as Areas 1, 3, and 5 as approximately depicted on the Surveys attached hereto as Exhibits A-1, A-2, and A-3. These Surveys will also be described in and subject to modification as may be required under the Wind Lease and Option Agreement.

*QFID# 6305, Dillon Wind LLC*

The Dillon I Project to be sited on Areas 1, 3 and 5 proposes to interconnect to the Devers-Farrell-Windland 115 kV line approximately 100 feet south of the Buckwind Substation.

As of the Effective Date, Seller may utilize Mitsubishi Heavy Industries 1.0 MW wind turbines on 69 meter tubular towers with 61.4 meter rotor diameters (or similar technology). However, Seller reserves the right to use different wind turbines or combinations of wind turbines in its sole discretion.

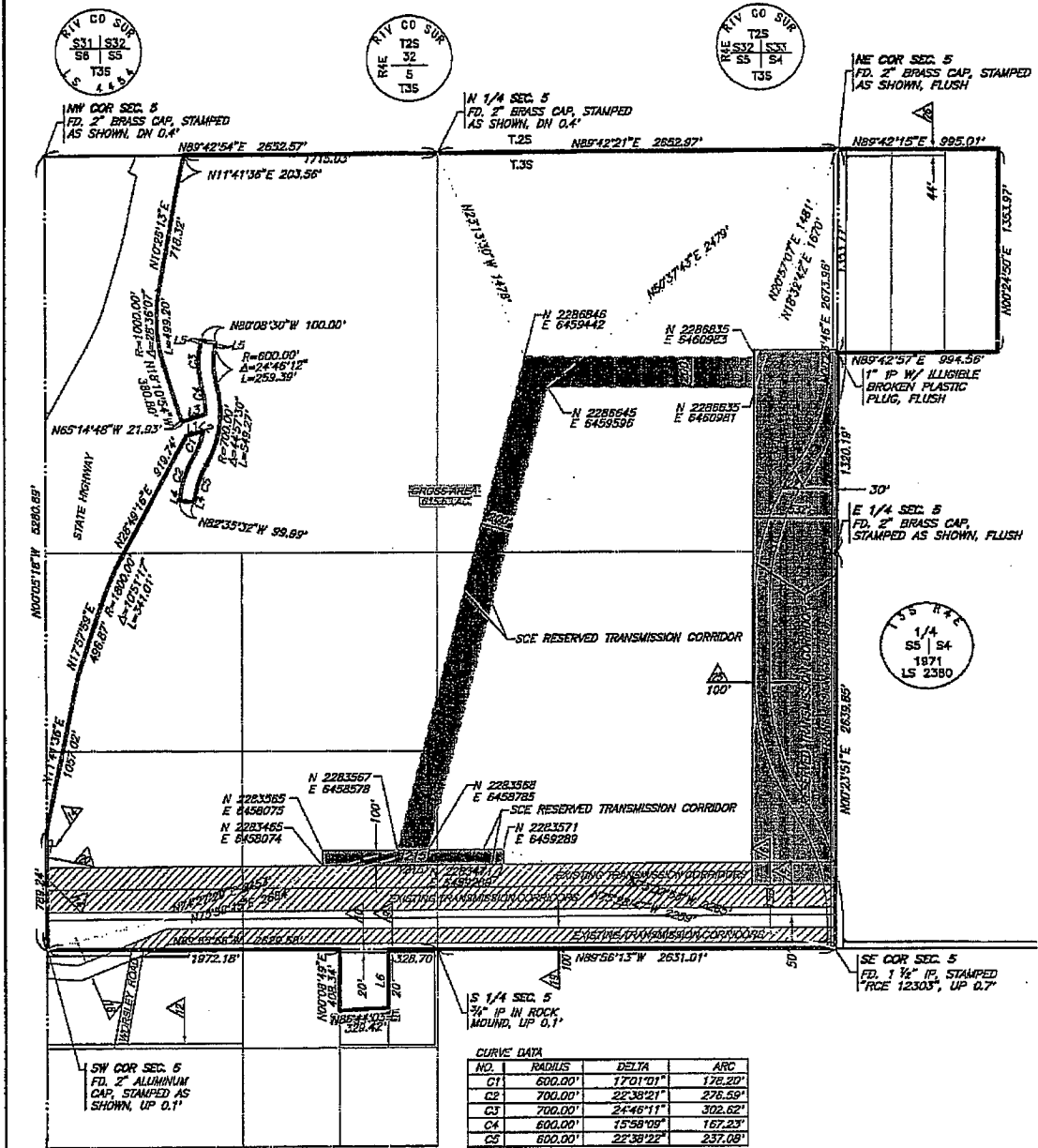
Seller anticipates that (1) the wind turbines will be aligned in a north-south direction normal to the prevailing west-east winds; (2) within the rows the machines will be spaced at approximately 1.5 – 2.0 rotor diameters (D); and (3) the spacing between rows will vary from 6-10D. However, the ultimate wind project layout and capacity of Dillon I will be contingent upon a more detailed review of all existing and planned encumbrances, local zoning ordinances, impacts to adjoining projects, the availability of easements for access and interconnection, and other matters.

**EXHIBIT A-1**

**AREA 1**

(See Next Page)

IN THE UNINCORPORATED TERRITORY OF THE COUNTY OF RIVERSIDE, STATE OF CALIFORNIA SHEET 1 OF 1  
**ENCUMBRANCE MAP EXHIBIT - AREA 1**  
 BEING A SURVEY OF A PORTION OF SECTION 4, 5 AND 8, TOWNSHIP 3 SOUTH, SB4



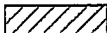

CURVE DATA

NO.	RADIUS	DELTA	ARC
C1	600.00'	17°01'01"	176.20'
C2	700.00'	22°38'21"	276.59'
C3	700.00'	24°46'11"	302.62'
C4	600.00'	15°58'09"	167.23'
C5	600.00'	22°38'22"	237.08'

LINE DATA


NO.	BEARING	DISTANCE
L1	N71°36'02\"/>	
L2	N85°21'02\"/>	
L3	N71°36'02\"/>	
L4	N07°24'26\"/>	
L5	N09°51'30\"/>	
L6	N00°07'38\"/>	

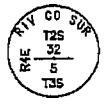
EXISTING TRANSMISSION CORRIDOR AREA: 44.11 AC  
 FUTURE TRANSMISSION CORRIDOR AREA: 68.01 AC  
 NET AREA: 503.11 AC

 EXISTING TRANSMISSION CORRIDOR  
 FUTURE TRANSMISSION CORRIDOR

SCALE: 1" = 700'

JN: 20160534.06

 STANTEC CONSULTING INC.  
 73-733 FRED WARING DRIVE  
 SUITE 100  
 PALM DESERT, CA 92260  
 760.346.9844 [stantec.com](http://stantec.com)



**EXHIBIT A-2**

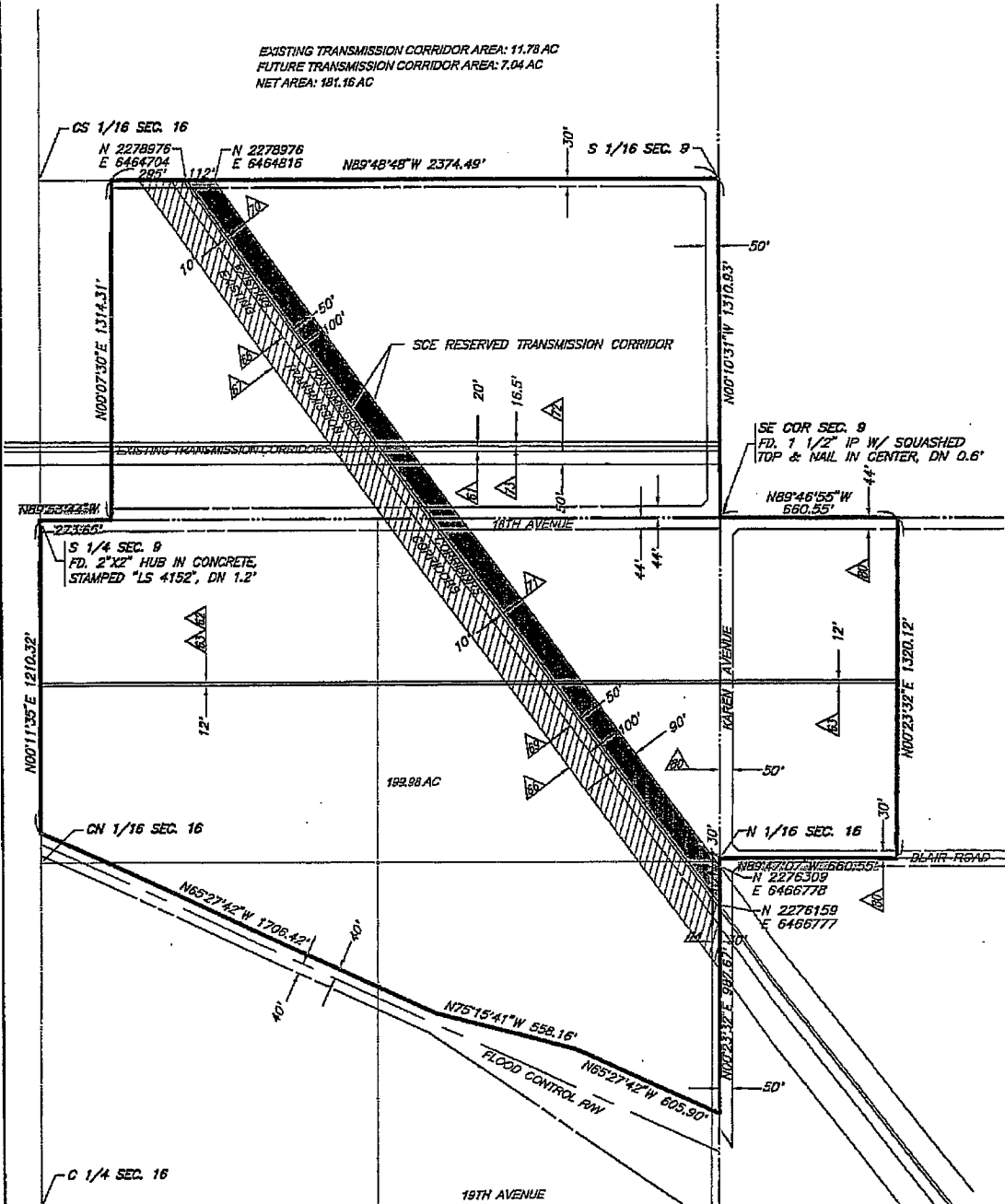
**AREA 5**

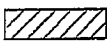

(See Next Page)

IN THE UNINCORPORATED TERRITORY OF THE COUNTY OF RIVERSIDE, STATE OF CALIFORNIA  
**ENCUMBRANCE MAP EXHIBIT - AREA 5**  
 BEING A SURVEY OF A PORTION OF SECTION 9, 15 AND 16, TOWNSHIP 3 SOUTH, RANGE 4 EAST, SBM

SHEET 1 OF 1


EXISTING TRANSMISSION CORRIDOR AREA: 11.78 AC  
 FUTURE TRANSMISSION CORRIDOR AREA: 7.04 AC  
 NET AREA: 181.16 AC



 EXISTING TRANSMISSION CORRIDOR  
 FUTURE TRANSMISSION CORRIDOR

SCALE: 1" = 400'

JN: 20160534.06



**STANTEC CONSULTING INC.**  
 73-733 FRED WARING DRIVE  
 SUITE 100  
 PALM DESERT, CA 92260  
 760.346.9844  
 stantec.com



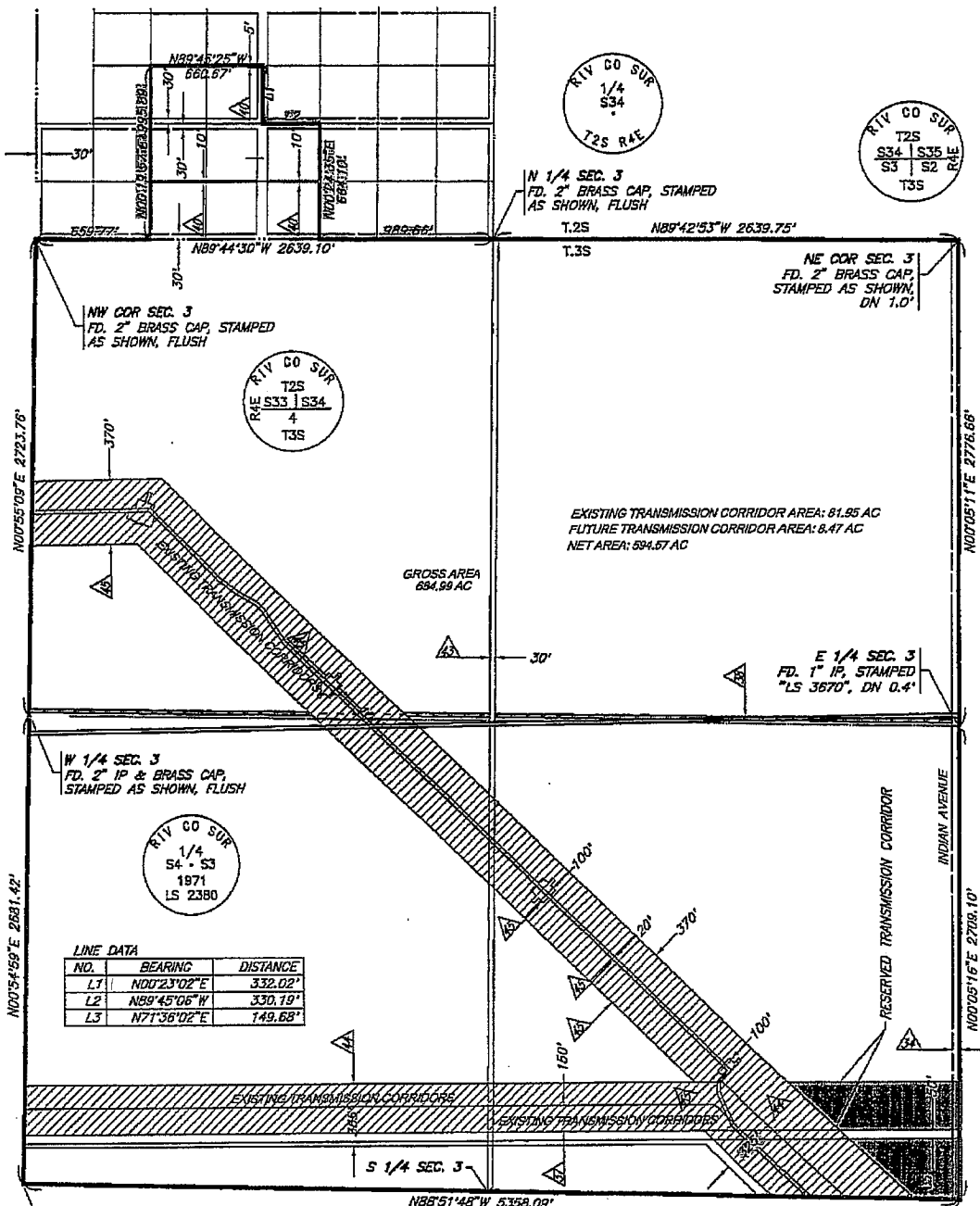
**EXHIBIT A-3**

**AREA 3**

(See Next Page)

IN THE UNINCORPORATED TERRITORY OF THE COUNTY OF RIVERSIDE, STATE OF CALIFORNIA  
**ENCUMBRANCE MAP EXHIBIT - AREA 3**  
 BEING A SURVEY OF SECTION 3, TOWNSHIP 3 SOUTH, RANGE 4 EAST, AND SECTION 34, TOWNSHIP 2 SOUTH, RANGE 4 EAST, SBM

SHEET 1 OF 1



RIV CO SUR  
 1/4  
 S34  
 T2S R4E

RIV CO SUR  
 T2S  
 S34 | S35 W  
 S3 | S2 E  
 T3S

N 1/4 SEC. 3  
 FD. 2" BRASS CAP, STAMPED  
 AS SHOWN, FLUSH

NW COR SEC. 3  
 FD. 2" BRASS CAP, STAMPED  
 AS SHOWN, FLUSH

RIV CO SUR  
 T2S  
 S33 | S34  
 4  
 T3S

NE COR SEC. 3  
 FD. 2" BRASS CAP,  
 STAMPED AS SHOWN,  
 DN 1.0'

EXISTING TRANSMISSION CORRIDOR AREA: 81.95 AC  
 FUTURE TRANSMISSION CORRIDOR AREA: 8.47 AC  
 NET AREA: 894.67 AC

GROSS AREA  
 894.67 AC

E 1/4 SEC. 3  
 FD. 1" IP, STAMPED  
 "LS 3670", DN 0.4'

W 1/4 SEC. 3  
 FD. 2" IP & BRASS CAP,  
 STAMPED AS SHOWN, FLUSH

RIV CO SUR  
 1/4  
 S4 - S3  
 1971  
 LS 2380

LINE DATA

NO.	BEARING	DISTANCE
L1	N00°23'02"E	332.02'
L2	N89°45'06"W	330.19'
L3	N71°36'02"E	149.68'

N00°54'59"E 2881.42'

N00°05'17"E 2776.68'

N00°05'16"E 2708.10'

SW COR SEC. 3  
 FD. 3" BRASS CAP, STAMPED  
 AS SHOWN, UP 0.2'

SOUTHERN CALIFORNIA  
 T3S R4E  
 S4 | S3  
 S9 | S10  
 1985  
 LS 4425  
 EDISON COMPANY

SE COR SEC. 3  
 FD. BOAT SPIKE & WASHER,  
 STAMPED "LS 3670", DN 0.3'

EXISTING TRANSMISSION CORRIDOR  
 FUTURE TRANSMISSION CORRIDOR

NOTE:  
 PHYSICAL LOCATION DIFFERS FROM EASEMENT  
 LOCATION AS SHOWN HEREON, FOR PURPOSES OF  
 THE SETBACKS, PHYSICAL LOCATION WAS USED.

SCALE: 1" = 600'

JN: 20160534.06

STANTEC CONSULTING INC.  
 73-733 FRED WARING DRIVE  
 SUITE 100  
 PALM DESERT, CA 92260  
 760.346.9844  
 stantec.com

**EXHIBIT B**





**NOTICE LIST**

<p><b>Name:</b> DILLON WIND LLC ("Seller")</p>	<p><b>Name:</b> SOUTHERN CALIFORNIA EDISON COMPANY ("SCE")</p>
<p>All Notices are deemed provided in accordance with Section 10.06 if made to the address and/or facsimile numbers provided below:</p>	<p>All Notices are deemed provided in accordance with Section 10.06 if made to the address and/or facsimile numbers provided below:</p>
<p>Street: 1125 NW Couch Street, Suite 700 City: Portland, Oregon Zip: 97209 Attn: VP, Renewable Origination Email: <a href="mailto:barrett.stambler@ppmenergy.com">barrett.stambler@ppmenergy.com</a> Phone: (503) 796-7103 Facsimile: (503) 796-6906 Duns: [REDACTED] Federal Tax ID Number: [REDACTED]</p>	<p>Street: 2244 Walnut Grove Ave., Quad 4-D City: Rosemead, California Zip: 91770 Attn: Director, QF Resources Email: <a href="mailto:Stuart.Hemphill@sce.com">Stuart.Hemphill@sce.com</a> Phone: (626) 302-1212 Facsimile: (626) 302-1103 Duns: [REDACTED] Federal Tax ID Number: [REDACTED]</p>
<p><b>Contract Administration:</b> Attn: Contract Administration Phone: (503) 796-7034 Facsimile: (503) 796-6905 Email: <a href="mailto:donna.foy@ppmenergy.com">donna.foy@ppmenergy.com</a></p>	<p><b>Contract Administration:</b> Attn: Cathy Mendoza Phone: (626) 302-4978 Facsimile: (626) 302-1103 Email: <a href="mailto:Cathy.Mendoza@sce.com">Cathy.Mendoza@sce.com</a></p>
<p><b>Invoices:</b> Attn: Settlement Supervisor Phone: (503) 796-6917 Facsimile: (503) 796-6908 Email: <a href="mailto:debbie.skinner@ppmenergy.com">debbie.skinner@ppmenergy.com</a></p>	<p><b>Invoices:</b> Attn: Selene Willis Phone: (626) 302-3329 Facsimile: (626) 302-3276 Email: <a href="mailto:Selene.Willis@SCE.com">Selene.Willis@SCE.com</a></p>

# Southern California Edison

Confidential Information

QFID# 6305, Dillon Wind LLC

<p><b>Scheduling:</b> Attn: Trading/Scheduling Phone: (503) 796-7089 Facsimile: (503) 796-6903 Email: <a href="mailto:lester.rawson@ppmenergy.com">lester.rawson@ppmenergy.com</a></p>	<p><b>Day Ahead Scheduling:</b> Attn: Manager of Day-Ahead Operations Phone: (626) 302-3239 Facsimile: (626) 307-4413 Email: <a href="mailto:Thomas.Watson@sce.com">Thomas.Watson@sce.com</a></p> <p><u>Scheduling Desk:</u> Phone (626) 307-4425 Back-up: (626) 307-4420 Facsimile: (626) 307-4413 Email: <a href="mailto:Presched@sce.com">Presched@sce.com</a></p>
<p><b>Day Ahead Scheduling:</b> Attn: Director, Resource Scheduling Phone: (503) 796-7119 Facsimile: (503) 796-7089 Email: <a href="mailto:steve.tish@ppmenergy.com">steve.tish@ppmenergy.com</a></p>	<p><b>Real Time Scheduling:</b> Attn: Manager of Real Time Operations Phone: (626) 302-3308 Facsimile: (626) 307-4416 Email: <a href="mailto:John.Pespisa@sce.com">John.Pespisa@sce.com</a></p> <p><u>Operations Desk:</u> Phone: (626) 302-3285 Back-up: (626) 307-4453 Facsimile: (626) 307-4416 Email: <a href="mailto:RealTime@sce.com">RealTime@sce.com</a></p>
<p><b>Payments:</b> Attn: Settlement Supervisor Phone: (503) 796-6917 Facsimile: (503) 796-6908 Email: <a href="mailto:debbie.skinner@ppmenergy.com">debbie.skinner@ppmenergy.com</a></p>	<p><b>Payments:</b> Attn: Cindy Shindle Phone: (626) 302-9272 Facsimile: (626) 302-1102 Email: <a href="mailto:Cindy.Shindle@sce.com">Cindy.Shindle@sce.com</a></p>
<p><b>Wire Transfer:</b> BNK: JP Morgan Chase, Chicago, IL ABA:  ACCT: </p>	<p><b>Wire Transfer:</b> BNK: JP Morgan Chase Bank ABA:  ACCT: </p>
<p><b>Credit and Collections:</b> Attn: Credit Manager Phone: (503) 796-7110 Facsimile: (503) 796-6902 Email: <a href="mailto:craig.ward@ppmenergy.com">craig.ward@ppmenergy.com</a></p>	<p><b>Manager of Credit and Collateral:</b> Attn: Credit Manager Phone: (626) 302-1129 Facsimile: (626) 302-2517 Email: <a href="mailto:CreditManager@sce.com">CreditManager@sce.com</a></p>

*The contents of this document are subject to a Non-Disclosure Agreement and shall not be disclosed.*

# Southern California Edison

*Confidential Information*

*QFID# 6305, Dillon Wind LLC*

<b>With additional Notices of an Event of Default or Potential Event of Default to:</b>  Attn: Legal Counsel Phone: (503) 796-7116 Facsimile: (503) 796-6907 Email: <a href="mailto:paul.kaufman@ppmenergy.com">paul.kaufman@ppmenergy.com</a>	<b>With additional Notices of an Event of Default or Potential Event of Default to:</b>  Attn: Manager, SCE Law Department QF Matters Section Phone: 626) 302-3141 Facsimile: (626) 302-1904 Email: <a href="mailto:J.Eric.Isken@sce.com">J.Eric.Isken@sce.com</a>
<b>Lender:</b> Attn: Phone: Facsimile: Email:	<b>Generation Operations Center:</b> Phone: (626) 302-3285 or Phone: (626) 302-3205
<b>Guarantor:</b> Attn: Phone: Facsimile: Email:	<b>IVR Scheduling:</b> Phone: (626) 302-1145

**EXHIBIT C**

**SCHEDULING REQUIREMENTS AND PROCEDURES  
FOR WIND POWER GENERATING FACILITIES**

1. Introduction.

The Parties shall abide by the Scheduling requirements and procedures described below and shall make 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 schedule and outage submissions.

2. Procedures That Apply Regardless of Generating Facility PIRP Status or Participation.

(a) Introduction.

These procedures apply to all wind powered Generating Facilities regardless of PIRP status or the Generating Facility's participation in the PIRP. In general, Generating Facilities must meet all of the following requirements before Scheduling with SCE.

(b) Information Exchange.

Seller shall provide to SCE information regarding Seller's Scheduling Coordinator ("SC") at least thirty (30) days before the expected commencement of the Term, or any change in Seller's SC. This information shall include the:

- (i) SC's name.
- (ii) SC's SCID as assigned by the ISO (e.g., SCE's ID is "SCE1").

Seller's SC and SCE shall then exchange their appropriate contact information including: names of authorized scheduling personnel, phone number, FAX numbers and e-mail addresses.

(c) SC-to-SC Trade Procedures.

Scheduling between the Parties will be via Scheduling Coordinator Trades ("SC-to-SC Trades"), as specified below:

- (i) Unless otherwise agreed, SCE requires e-mail notification of all non-binding Day-Ahead schedules, and telephonic notice of binding Hour-Ahead schedules, followed by written electronic confirmation of day totals (e-mail preferred, FAX accepted).
- (ii) Non-binding Day-Ahead Schedules shall be communicated to SCE's Day-Ahead Group no later than 8:30 a.m. the day prior to the effective date of the Schedule.
- (iii) Hour-Ahead Schedules shall be communicated to SCE's Real-Time Group no later than twenty (20) minutes prior to the ISO's Hour-Ahead scheduling deadline. If Seller does not communicate the Hour-Ahead schedule at least twenty (20) minutes before the ISO's Hour-Ahead scheduling deadline, the schedule for that hour shall be deemed to be the same as the schedule for the previous hour.
- (iv) The SC-to-SC Trade quantity must match the Generating Facility Schedule.

3. Procedures That Apply After the Generating Facility Has Met All Requirements for PIRP Monthly Balancing.

(a) Introduction.

These procedures apply to wind powered Generating Facilities that have met all ISO requirements for monthly balancing as stated in the ISO Tariff and the ISO Eligible Intermittent Resources Protocol ("EIRP"), or its successor protocol.

(b) Advisory Forecasts.

At least thirty (30) days before Initial Operation and thereafter until the Firm Operation Date, Seller shall provide SCE an electronic file containing a non-binding rolling thirty (30) day estimate of hourly Schedules for the Generating Facility. At least thirty (30) days before the Firm Operation Date and thereafter at least thirty (30) days before the end of each Term Year, Seller shall provide SCE an electronic file containing a non-binding estimate of hourly Schedules for the Generating Facility on a 12 x 24 basis for the next Term Year. These files shall:

- (i) Be constructed using reasonable file formats, templates, and logical file-naming conventions, as agreed to by the Parties.
- (ii) Include Seller's contact information.
- (iii) Be sent to esmstpoutage@sce.com, with a copy to presched@sce.com, or as otherwise instructed by SCE.

(c) Communication of Day-Ahead PIRP Forecast.

Seller's SC shall communicate to SCE the ISO's Day-Ahead PIRP forecast as soon as practicable after the SC extracts it from the ISO Web site, but no later than 8:30 a.m. the day prior to the effective date of the schedule change. If the ISO fails to publish a Day-Ahead Forecast prior to 8:30 am, then SCE and the Seller's SC will agree upon a SC-SC trade to act as a Schedule for Day-Ahead balancing purposes only. This forecast is non-binding and subject to change in the Hour-Ahead market.

(d) Communication of Hour-Ahead PIRP Schedule.

Seller's SC shall communicate to SCE the ISO's Hour-Ahead PIRP Schedule twenty (20) minutes prior to the close of the Hour Ahead market. If the ISO fails to publish a Hour-Ahead Forecast prior to fifteen (15) minutes before the close of the Hour-Ahead market, then the schedule for that hour shall be deemed to be the same as the schedule for the previous hour.

4. Procedures That Apply If the Generating Facility Has *Not* Met All Requirements for PIRP Monthly Balancing.

(a) Introduction.

These procedures apply to wind powered Generating Facilities before they have met all ISO requirements for monthly balancing stated in the ISO's Tariff and the EIRP (or its successor protocol) and to wind powered Generating Facilities if the PIRP (or a successor program) is not available.

- (b) At least thirty (30) days before Initial Operation and thereafter until the Firm Operation Date, Seller shall provide SCE an electronic file containing a non-binding rolling thirty (30) day estimate of hourly Schedules for the Generating Facility. At least thirty (30) days before the Firm Operation Date and thereafter at least thirty (30) days before the end of each Term Year, Seller shall provide SCE an electronic file containing a non-binding estimate of hourly Schedules for the Generating Facility on a 12 x 24 basis for the next Term Year. These files shall:



- (i) Be constructed using reasonable file formats, templates, and logical file-naming conventions, as agreed to by the Parties.
  - (ii) Include Seller's contact information.
  - (iii) Be sent to esmstpoutage@sce.com, with a copy to presched@sce.com, or as otherwise instructed by SCE.
  - (iv) Be updated by close of business each Wednesday.
- (c) Small Scheduling Changes.

Seller shall limit hour-to-hour Schedule changes to no less than 1 MW.

- (d) Notification of SC-to-SC Trade Schedule Amounts.

Seller shall notify SCE in writing (e-mail or fax) of the hourly Delivered Amounts Seller has instructed its SC to schedule Day-Ahead, by the Day-Ahead notification deadline.

5. Meteorological Equipment and Reporting Requirements.

Seller shall install and maintain a stand-alone meteorological station at the Generating Facility to monitor and report weather data to both the ISO and SCE (and shall continue to transmit such data to SCE if the PIRP program is discontinued and there is no ISO successor program). SCE shall bear equipment installation and other costs of transmitting data from the meteorological station to SCE. 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 typically used in the wind industry to continuously monitor weather conditions at a wind resource site.

The station shall be designed to collect and record data in accordance with 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 station shall be equipped to measure and record the minimum data required by the ISO, in the manner specified by the ISO.

Seller shall submit to the ISO, its technical specification for the meteorological station along with a site plan showing the location of the station, the location of all wind turbines and the wind rose for the Site.

If the ISO reasonably concludes that the permanent 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.

Seller shall install additional meteorological stations at the Generating Facility, as may be required by SCE, at SCE's expense, provided that such station shall not interfere with the Operation of the Generating Facility.

6. Outage Scheduling Procedures.

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.

**EXHIBIT D**

**PAYMENT ADJUSTMENTS FOR SCHEDULING DEVIATIONS  
BY SCHEDULING COORDINATOR**

In accordance with the provisions of Section 4.02(c), if, in any month, a Generating Facility's total Scheduled Amounts deviate from the Generating Facility's Delivered Amounts by more than plus or minus three percent ( $\pm 3\%$ ) of the Generating Facility's Delivered Amounts, then Seller's monthly payment shall be subject to a payment adjustment calculated by SCE in accordance with the procedures and formulae set forth below.

(1) UNDER-SCHEDULING ADJUSTMENT.

If during any Settlement Interval:

- (a) The Scheduled Amounts are less than ninety-seven percent (97%) of the Delivered Amounts, and
- (b) If the Seller is responsible for Scheduling, the simple average Market Price for the Settlement Interval is greater than the time-differentiated Energy Price payable during the Settlement Interval, or
- (c) If SCE is responsible for Scheduling, the simple average Market Price for the Settlement Interval is less than the time-differentiated Energy Price payable during the Settlement Interval;

Then Seller's monthly payment amount shall be adjusted by the total Under-Scheduling Settlement Interval Adjustment Amounts for that month, with the amount for each Settlement Interval for which the conditions of 1(a) and (b) or 1(a) and (c) exist, calculated by the following formula:

UNDER-SCHEDULING SETTLEMENT INTERVAL ADJUSTMENT AMOUNT =

$$[A - B] \times [D - (C \times E)]$$

- Where A = The Delivered Amounts in the Settlement Interval being calculated.
- B = The Scheduled Amounts in the Settlement Interval being calculated.
- C = Energy Price in \$/MWh.
- D = Simple average Market Price for the Settlement Interval being calculated in \$/MWh.

E = Energy Payment Allocation Factor applicable to the Settlement Interval being calculated.

If the total Under-Scheduling Settlement Interval Adjustment Amount for all Settlement Intervals in the month is a positive amount, the value shall appear on the Seller's next monthly invoice in the form of a debit. If the total Under-Scheduling Interval Adjustment Amount for all Settlement Intervals is a negative amount, the value shall appear on the Seller's next monthly invoice in the form of a credit.

(2) OVER-SCHEDULING ADJUSTMENT.

If during any Settlement Interval;

- (a) The Scheduled Amounts are greater than one hundred three percent (103%) of the Delivered Amounts, and
- (b) If the Seller is responsible for Scheduling, the simple average Market Price for the Settlement Interval is less than the time-differentiated Energy Price payable during the Settlement Interval; or
- (c) If SCE is responsible for Scheduling, the simple average Market Price for the Settlement Interval is greater than the time-differentiated Energy Price payable during the Settlement Interval;

Then Seller's monthly payment amount shall be adjusted by the total Over-Scheduling Settlement Interval Adjustment Amounts for that month, with the amount for each Settlement Interval where the conditions of 2a) and (b) or 2(a) and (c) exist calculated by the following formula:

OVER-SCHEDULING SETTLEMENT INTERVAL ADJUSTMENT AMOUNT =

$$[B - A] \times [(C \times E) - D]$$

- Where A = The Delivered Amounts in the Settlement Interval being calculated.
- B = The Scheduled Amounts in the Settlement Interval being calculated.
- C = Energy Price in \$/MWh payable during the Settlement Interval being calculated.
- D = The simple average Market Price for the Settlement Interval being calculated in \$/MWh.

E = Energy Payment Allocation Factor applicable to the Settlement Interval being calculated.

If the total Over-Scheduling Settlement Interval Adjustment Amount for all Settlement Intervals in the month is a positive amount, the value shall appear on the Seller's next monthly invoice in the form of a debit. If the total Over-Scheduling Interval Adjustment Amount for all Settlement Intervals is a negative amount, the value shall appear on the Seller's next monthly invoice in the form of a credit.

**EXHIBIT E****ENERGY REPLACEMENT DAMAGE AMOUNT**

In accordance with the provisions of Section 3.05, if in any Term Year Seller fails to meet Seller's Energy Delivery Obligation;

Then Seller shall be subject to an Energy Replacement Damage Amount penalty calculated as follows:

ENERGY REPLACEMENT DAMAGE AMOUNT =

$$[(A - B - C) \times (D - E)] - [F + G + H]$$

Where:

- A = Seller's Energy Delivery Obligation in MWh.
- B = Sum of Metered Amounts over the relevant twenty-four (24) month period in MWh.
- C = Sum of Lost Output over the relevant twenty-four (24) month period in MWh.
- D = Simple average of the Market Prices for the twenty-four (24) month period in \$/MWh.
- E = Energy Price in \$/MWh.
- F = Energy Replacement Damage Amount calculated at the end of the previous Term Year, if any, in dollars.
- G = Warranty Availability Lost Production Payments made by Seller for the current Term Year, if any, in dollars.
- H = Warranty Availability Lost Production Payments made by Seller for the previous Term Year, if any, in dollars.

Notes:

- 1) In the above, calculation, the result of "(D-E)" shall not be greater than fifty dollars (\$50) per MWh or less than twenty dollars (\$20) per MWh.

# Southern California Edison

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*QFID# 6305, Dillon Wind LLC*

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- 2) If the result of the calculation above is zero or less, Seller shall not be obligated to pay an Energy Replacement Damage Amount. In no event shall SCE pay an Energy Replacement Damage Amount.

**EXHIBIT F****SELLER'S MILESTONE SCHEDULE****DILLON 1**

<i>No.</i>	<i>Date</i>	<i>Milestones</i>
1	8/15/06	Obtain consents to the assignment of the Wintec VI Interconnection Agreement to Seller (2 months)
2	Done	Complete Pre Application Review with Riverside County (4)
3	Done	File a Conditional Use Permit application with Palm Springs (6)
4	9/15/06	Files a CEC Certification application.
5	3/31/07	Obtains control of all lands and rights-of-way comprising the Site (9)
6	6/1/07	Receives a Conditional Use Permit from City of Palm Springs.
7	6/1/07	Receives a WECS Permit from Riverside County
8	4/1/07	Receives CEC Pre-Certification.
9	4/1/07	Execute an Engineering, Procurement and Construction ("EPC") contract (15)
10	7/1/07	Obtain Section 851 CPUC approval (18)
11	9/1/07	Begin construction of the Generating Facility (18)
12	11/1/07	Begin startup activities (20)
13	12/1/07	Achieve Initial Operation (21)
14	12/31/07	Demonstrate the Nameplate Contract Capacity.



**EXHIBIT G****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 B, on the fifth (5<sup>th</sup>) 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 Seller's receipt, or forfeiture of its Development Fee.

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 A.
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.

**EXHIBIT H**

**FORM OF GUARANTY**

**GUARANTY**

***SPF(US) on behalf of Dillon Wind LLC***

THIS GUARANTY, dated as of [\_\_\_\_\_] , 200[ ] , is issued by Scottish Power Finance (US), Inc., a Delaware corporation, ("Guarantor") in favor of Southern California Edison Company, a California Corporation ("Creditor"). Dillon Wind LLC, an Oregon limited liability company, ("Debtor") is an affiliate of Guarantor. The Guaranty is made with reference to the Guaranty and Support Agreement dated December 12, 2005 ("G & S Agreement") between Guarantor and Scottish Power PLC ("SPP").

**RECITALS**

A. Debtor and Creditor have entered into an Amended and Restated Renewable Power Purchase and Sale Agreement between Creditor and Debtor dated as of [\_\_\_\_\_] , 200[ ] (the "Agreement").

B. This Guaranty is delivered to Creditor by Guarantor pursuant to the Agreement.

**AGREEMENT**

1. Guaranty.

A. Guaranty of Obligations Under the Agreement. For value received, Guarantor hereby absolutely, unconditionally and irrevocably, subject to the express terms hereof, guarantees the prompt and complete payment when due, whether by acceleration or otherwise, of all obligations and liabilities, whether now in existence or hereafter arising, by Debtor, its successors and assigns to Creditor pursuant to the Agreement with respect to the Dillon Wind Project located in Riverside County, California (the "Obligations"). This Guaranty is one of payment and not of collection and shall apply regardless of whether recovery of all such Obligations may be or become barred by any statute of limitations, discharged or uncollectible in any bankruptcy, insolvency or other similar proceeding, or otherwise unenforceable. Upon the failure or refusal of Debtor to pay any Obligations, Creditor may make a demand upon Guarantor. Such demand shall be in writing and shall state the amount Debtor has failed to pay and an explanation of why such payment is due, with a specific statement that Creditor is calling upon Guarantor to pay under this Guaranty. Guarantor shall promptly, but in no event less than five (5) business days following demand by Creditor, pay to Creditor 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.

B. Maximum Guaranteed Amount. Notwithstanding anything to the contrary herein, Guarantor's aggregate obligation to Creditor hereunder is limited to:

[INSERT, IN THE CASE OF A "DEVELOPMENT FEE GUARANTY":] **\$450,000**, which amount shall automatically increase to **\$900,000** when the second half of the Development Fee is required to be posted in accordance with Section 3.04(a) of the Agreement.

[INSERT, IN THE CASE OF A GUARANTY AGREEMENT BEING POSTED AS PERFORMANCE ASSURANCE:] The amount of Performance Assurance determined under Special Condition E of the Agreement [which, in the case of a 45 MW Nameplate Contract Capacity, is **\$6,750,000**], less the amount (if any) of the Seller's Performance Assurance Amount (as defined in the Agreement) that Debtor is permitted to withhold pursuant to Section 3.04(a) of the Agreement in respect of the Development Fee (as defined in the Agreement).

(the "Maximum Guaranteed Amount") (it being understood for purposes of calculating the Maximum Guaranteed Amount of Guarantor hereunder that any payment by Guarantor either directly or indirectly to the Creditor, pursuant to a demand made upon Guarantor by Creditor or otherwise made by Guarantor pursuant to its obligations under this Guaranty including any indemnification obligations, shall reduce Guarantor's maximum aggregate liability hereunder on a dollar-for-dollar basis), including costs and expenses incurred by Creditor in enforcing this Guaranty, and shall not either individually or in the aggregate be greater or different in character or extent than the obligations of Debtor to Creditor under the terms of the Agreement. IN NO EVENT SHALL GUARANTOR BE SUBJECT TO ANY CONSEQUENTIAL, EXEMPLARY, EQUITABLE, LOSS OF PROFITS, PUNITIVE, TORT OR OTHER SIMILAR DAMAGES, EXCEPT TO THE EXTENT THAT THE PAYMENTS REQUIRED TO BE MADE PURSUANT TO THE OBLIGATIONS UNDER THE AGREEMENT ARE DEEMED TO BE SUCH DAMAGES. IF AND TO THE EXTENT ANY PAYMENT MADE PURSUANT TO THE OBLIGATIONS UNDER THE AGREEMENT IS DEEMED TO CONSTITUTE LIQUIDATED DAMAGES, IT IS AGREED THAT SUCH DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO ASCERTAIN AND SUCH PAYMENT CONSTITUTES A REASONABLE APPROXIMATION THEREOF AND NOT A PENALTY.

2. Setoff: Currency. All sums payable by Guarantor hereunder shall be made in freely transferable and immediately available funds without any setoff, deduction or withholding unless such setoff, deduction or withholding is required by applicable law. If Guarantor is so required to setoff, deduct or withhold, then Guarantor shall pay, in addition to

the payment to which Creditor is otherwise entitled, such additional amount as is necessary to ensure that the net amount actually received by Creditor (free and clear of any setoff, deduction or withholding) will equal the full amount which Creditor would have received had no such setoff, deduction or withholding been required. Sums payable hereunder shall be made in the currency in which the Obligations were due.

3. Waiver of Defenses. Guarantor hereby waives notice of acceptance of this Guaranty and of the Obligations and any action taken with regard thereto, and waives presentment, protest, notice of dishonor or non-payment of the Obligations, suit, or the taking of and failing to take other action by Creditor against Debtor, Guarantor or others. Except as expressly provided in this Paragraph 3, Guarantor hereby waives any defense of Debtor. Any and all suretyship defenses are hereby waived by Guarantor. Without limitation, Creditor may at any time and from time to time without notice to or consent of Guarantor and without impairing or releasing the obligations of Guarantor hereunder: (1) make any change to the terms of the Obligations; (2) take or fail to take any action of any kind in respect of any security for the Obligations; (3) exercise or refrain from exercising any rights against Debtor or others in respect of the Obligations; (4) compromise or subordinate the Obligations, including any security therefor; or (5) apply any sums received to any indebtedness for which Debtor is liable, whether or not such indebtedness is an Obligation. —Notwithstanding the foregoing, Guarantor shall be entitled to assert rights, setoffs, counterclaims and other defenses which Debtor may have to performance of any of the Obligations, other than defenses based upon lack of authority of Debtor to enter into and/or perform its obligations under the Agreement or any insolvency, bankruptcy, reorganization, arrangement, composition, liquidation, dissolution or similar proceeding with respect to Debtor.

4. Term. This Guaranty shall continue in full force and effect until the end of the Term of the Agreement, unless replaced pursuant to the terms of the Agreement (in which case this Guaranty shall expire upon Creditor's receipt of such replacement). It is understood and agreed, however, that notwithstanding any such termination this Guaranty shall continue in full force and effect with respect to the Obligations arising prior to such termination; *provided, however,* that the aggregate liability of guarantors under multiple guarantees shall not exceed the Maximum Guaranteed Amount. Guarantor further agrees that this Guaranty shall continue to be effective or be reinstated, as the case may be, if at any time payment, or any part thereof, of any Obligation is rescinded or must otherwise be restored or returned due to bankruptcy or insolvency laws or otherwise. Creditor shall return this original executed Guaranty to Guarantor within twenty (20) days of termination of this Guaranty.

5. Subrogation. Until all Obligations are indefeasibly paid, Guarantor hereby waives all rights of subrogation, reimbursement, contribution and indemnity from Debtor and any collateral held therefor, and Guarantor hereby subordinates all rights under any debts owing from Debtor to Guarantor, whether now existing or hereafter arising, to the prior payment of the Obligations. Upon any Obligation becoming due, Debtor or its assignee, trustee in bankruptcy, receiver, or any other person having custody or control over any or all of Debtor's property is authorized and directed to pay to Creditor the entire unpaid balance of

the debt before making any payments to Guarantor, and for that purpose. Any amounts received by Guarantor in violation of the foregoing shall be received as trustee for the benefit of Creditor and shall forthwith be paid over to Creditor.

6. Expenses. Whether or not legal action is instituted, Guarantor agrees to reimburse Creditor on demand for all reasonable attorneys' fees and all other reasonable costs and expenses incurred by Creditor in enforcing this Guaranty or in enforcing any of the Obligations against Debtor. Notwithstanding the foregoing, the Guarantor shall have no obligation to pay any such costs or expenses if, in any action or proceeding brought by Creditor giving rise to a demand for payment of such costs or expenses, it is finally adjudicated that the Guarantor is not liable to make payment under Section 2.1 hereof.

7. Assignment. Guarantor shall have the right to assign its rights or delegate its obligations under this Guaranty to a party reasonably acceptable to SCE that meets the credit requirements set forth in Special Condition F of the Agreement. Creditor may assign its rights under this Guaranty in whole or part without the prior written consent of Guarantor; *provided, however*, that no such assignment shall be binding upon the Guarantor until thirty (30) days following the date Guarantor receives written notice of such assignment from the Creditor.

8. Non-waiver. The failure of Creditor to enforce any provisions of this Guaranty at any time or for any period of time shall not be construed to be a waiver of any such provision or the right thereafter to enforce same. All remedies of Creditor under this Guaranty shall be cumulative. The terms and provisions hereof may not be waived, altered, modified or amended except in a writing executed by Guarantor and a duly authorized representative of Creditor.

9. Entire Agreement. This Guaranty is the entire and only agreement between Guarantor and Creditor with respect to the guaranty of the Obligations of Debtor by Guarantor. All representations, warranties, agreements or undertakings heretofore or contemporaneously made, which are not set forth herein, are superseded hereby.

10. Notice. Any demand for payment, notice, request, instruction, correspondence or other document to be given hereunder by any party to another shall be in writing and shall be deemed received (a) if given personally, when received, (b) if mailed by certified mail (postage prepaid and return receipt requested), five days after deposit in the U.S. mails, (c) if given by facsimile, when transmitted with confirmed transmission or (d) if given via overnight express courier service, when received or personally delivered, in each case with charges prepaid and addressed as follows (or such other address as either Guarantor or Creditor shall specify in a notice delivered to the other in accordance with this Section):

# Southern California Edison

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*QFID# 6305, Dillon Wind LLC*

If to Guarantor:

Scottish Power Finance (US), Inc.  
1125 NW Couch Street, Suite 700  
Portland, OR 97209  
Attn: Treasurer/Credit Manager

If to Creditor:

Southern California Edison Company  
2244 Walnut Grove Ave.  
Rosemead, CA 91770  
Attn: David Yi  
Fax: (626) 302-2517

11. Representations and Covenants of Guarantor. Guarantor hereby represents and warrants that (a) it is a corporation duly organized, validly existing and in good standing in the state of its incorporation and has full power and authority to execute, deliver and perform under this Guaranty, (b) it has taken all necessary corporate actions to execute, deliver and perform under 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 affecting creditors' rights generally and to general equitable principles, (d) execution of, delivery of and performance by Guarantor under this Guaranty does not conflict with, violate or create a default under any of its documents of organization, 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 of, delivery of and performance under this Guaranty have been duly and validly obtained and remain in full force and effect. Guarantor hereby agrees to provide reasonable notice to Creditor if there are material changes to the terms of the G & S Agreement. It is understood and agreed, however, that notwithstanding any material change or termination of the G&S

*The contents of this document are subject to a Non-Disclosure Agreement and shall not be disclosed.*

Agreement, it shall continue in full force and effect with respect to all Obligations arising prior to such material change or termination.

12. Governing Law: Jurisdiction. This Guaranty shall be governed by and construed in accordance with the laws of the state of New York without giving effect to principles of conflict of law. Guarantor and Creditor hereby consent to jurisdiction in and to conduct any judicial actions or proceedings arising directly, indirectly or otherwise in conjunction with, out of, related to or arising from this Guaranty in San Francisco, California.

13. Conditions to Effectiveness. This Guaranty shall not be effective until countersigned by Creditor in the space indicated below.

14. Counterparts. This Guaranty may be executed in counterparts, each of which when executed and delivered shall constitute one and the same instrument.

15. Further Assurances. Guarantor shall cause to be promptly and duly taken, executed and acknowledged and delivered, such further documents and instruments as Creditor may from time to time reasonably request in order to carry out the intent and purposes of this Guaranty.

16. Limitation on Liability. Except as specifically provided in this Guaranty, Creditor shall have no claim, remedy or right to proceed against Guarantor or against any past, present or future stockholder, partner, member, director or officer thereof for the payment of any of the Obligations, as the case may be, or any claim arising out of any agreement, certificate, representation, covenant or warranty made by Debtor in the Agreement.

**[SIGNATURE PAGE FOLLOWS]**

# Southern California Edison

*Confidential Information*

*QFID# 6305, Dillon Wind LLC*

IN WITNESS WHEREOF, the Guarantor has executed and delivered this Guaranty as of the date first set forth above.

Scottish Power Finance (US), Inc.

a Delaware corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Acknowledged and Agreed:

Southern California Edison Company,

a California corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_



**EXHIBIT I**

**NON-DISCLOSURE AGREEMENT**

**NON-DISCLOSURE AGREEMENT**

**Between**

**SOUTHERN CALIFORNIA EDISON COMPANY**

**and**

**PPM ENERGY, INC.**

SOUTHERN CALIFORNIA EDISON COMPANY ("SCE"), a California corporation, and PPM Energy, Inc. ("PPM"), an Oregon corporation, hereby enter into this Non-Disclosure Agreement ("Agreement"). SCE and PPM 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 August 29, 2003, with a goal of negotiating and executing power purchase agreements with ERRs whose proposals are selected pursuant to the RFP.
- B. PPM submitted a proposal for the Fairmont Wind Project in response to the RFP and was shortlisted by SCE. PPM also represents that it is in the process of acquiring certain assets from Wintec, including a proposed power purchase agreement that SCE shortlisted as part of its RFP process (the "Wintec PPA").
- C. The Parties desire the receiving Party to keep confidential any confidential or proprietary information disclosed by one Party to the other in connection with the following (individually, a "Transaction" and collectively the "Transactions"): (i) the proposed power purchase agreement for the Fairmont Wind Project and related documentation; (ii) the proposed Wintec PPA; and (iii) a proposed Wind Monitoring Lease and any related agreements or documentation between PPM and SCE regarding certain real property in the San Geronimo Pass area.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth below, 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 9 of this Agreement, relating to any of the Transactions shall be referred to as "Confidential Information." Any such communications must comply with the provisions of section 5 herein to be considered Confidential Information.

2. Each Party agrees to treat Confidential Information received by it from the other Party as confidential and shall not disclose such Confidential Information to third parties except as specifically authorized herein or otherwise as specifically agreed to by both Parties in writing. Accordingly, a Party may disclose Confidential Information that it receives from the other Party only to the following third parties who read and agree to abide by this Agreement (each, a "Permitted Disclosee"): (a) a Party's employees and directors (including employees and directors of a Party's affiliate from which corporate approval is required), financial advisors, attorneys, consultants or accountants who have a strict need to know solely for the purpose of assisting in evaluating one or more of the Transactions; and (b) prospective lenders or investors having a good faith interest in financing or investing directly or indirectly in the Fairmont Wind Project or any project to be developed by PPM on land leased from SCE.

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"). SCE shall 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. If SCE is not able to obtain a protective order, appropriate application, or agreement, 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:

- 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 PPM can demonstrate in writing was already known to SCE or PPM prior to the effective date of this Agreement;
- c. Information which comes to SCE or PPM from a bona fide third party source not under an obligation of confidentiality;
- d. Information which is independently developed by SCE or PPM without use of or reference to Confidential Information or information containing Confidential Information; or

5. 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"

Or

"CONFIDENTIAL AND PROPRIETARY".

6. The Parties agree not to introduce (in whole or in part) into evidence or otherwise voluntarily disclose in any administrative or judicial proceeding, (except one, if any, having to do with this agreement and the RFP process) any Confidential Information, except as required by law or as SCE or PPM 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.

7. 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.

8. 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; (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) 302-1103

If to PPM:

PPM Energy, Inc.  
1125 NW Couch Street  
Suite 700  
Portland, OR 97209  
Attention: Managing Director, Renewables Origination  
Telephone: (503) 796-7103  
Facsimile: (503) 796-6907

9. This Agreement shall be effective as of October 3, 2003, and shall terminate five years from such date or earlier upon the mutual written consent of the Parties (the "Effective Date").

10. This Agreement shall be interpreted in accordance with the plain meaning of its terms and not strictly for or against either Party 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.

11. 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.

12. This Agreement may not be modified except by a written agreement executed by both Parties.

13. 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. EACH PARTY WAIVES ITS RESPECTIVE RIGHT TO ANY JURY TRIAL WITH RESPECT TO ANY LITIGATION ARISING UNDER THIS AGREEMENT. The Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this Agreement.

14. This Agreement fully expresses the Parties' agreement concerning the subject matter hereof and supersedes any prior agreements or understandings regarding the same subject matter. By entering into this Agreement, neither Party is committing itself to entering into any Transaction. Until definitive agreements between the Parties are negotiated and signed with respect to a Transaction, no Party shall have any other legal obligations, expressed or implied, or arising under this Agreement or in the course of negotiations, to enter into any Transaction.

15. The signatories hereto represent that they have been duly authorized to enter into this Agreement on behalf of the Party for whom they sign.

16. 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.

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

18. Neither Party shall by entering into this Agreement or by delivering Confidential Information pursuant to this Agreement, be deemed to have made any representation or warranty, express or implied, regarding the accuracy or completeness of the Confidential Information disclosed by such Party. If the Parties enter into a power purchase agreement in connection with a Transaction, the preceding sentence shall not be construed to apply to information such as meter data and other similar information required to be provided by one party to the other in connection with the routine administration of the power purchase agreement in accordance with its terms. Subject to the preceding sentence, the disclosing Party shall not have any liability to the receiving Party or any of its Permitted Disclosees resulting from the use of the Confidential Information by the receiving Party or its Permitted Disclosees.

19. IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY LOST OR PROSPECTIVE PROFITS OR ANY OTHER SPECIAL, PUNITIVE, EXEMPLARY, CONSEQUENTIAL, INCIDENTAL OR INDIRECT LOSSES OR DAMAGES (IN TORT, CONTRACT OR OTHERWISE) ARISING UNDER THIS AGREEMENT OR ANY BREACH OF THIS AGREEMENT. TO THE EXTENT IT IS APPLICABLE TO THE LIMITATIONS SET FORTH IN THIS SECTION, THE PARTIES HEREBY WAIVE

# Southern California Edison

Confidential Information

QFID# 6305, Dillon Wind LLC

CAL CIV CODE SEC 1542.

SOUTHERN CALIFORNIA EDISON COMPANY,  
a California corporation  
2244 Walnut Grove Avenue  
Rosemead, CA 91770

PPM ENERGY, INC.  
an Oregon Corporation  
1125 NW Couch Street, Suite 700  
Portland, OR 97209

By: *K. M. Payne*  
Name: *Kerwin M. Payne*  
Title: *Director of Resources*  
Date: *1/20/05*

By: *Jean M. Wiscom* *BCI*  
Name: *Jean M. Wiscom* *P.M.*  
Title: *Jean Wiscom*  
*Vice President Business Development*  
Date: \_\_\_\_\_

APPROVED  
STEPHEN E. PICKETT  
Sr. Vice President and  
General Counsel  
By: *Stephen E. Pickett*  
Date: *1/14/05* Attorney  
*2005*



SOUTHERN CALIFORNIA  
**EDISON**<sup>®</sup>

An EDISON INTERNATIONAL<sup>®</sup> Company

Kenneth Pickrahn  
Director  
Power Procurement Finance

June 22, 2006

VP, Renewable Origination  
Dillon Wind LLC  
1125 NW Couch Street, Suite 700  
Portland, Oregon 97209

Re: Dillon Wind Project

Dear Sir or Madam:

Within the context of our negotiations of that certain Renewable Power Purchase and Sale Agreement between Southern California Edison Company ("SCE") and PPM Energy, Inc. ("PPM"), dated as of August 31, 2005 (the "PPA"), PPM executed a non-disclosure agreement on January 1, 2005 (the "Non-Disclosure Agreement"). In light of the fact that PPM intends to assign all of its rights and obligations under the PPA to Dillon Wind LLC ("Dillon"), we request that Dillon abide by the terms of the Non-Disclosure Agreement.

We further ask that Dillon agree to allow SCE to disclose the PPA to representatives of its rating agencies, Moody's and Standard & Poor's (including any successor organizations, the "Rating Agencies"), who have a strict need to know solely for the purpose of assisting SCE in evaluating the PPA for accounting purposes in respect to the potential impact of the PPA on SCE's financial reporting obligations, so long as SCE (i) redacts the Energy Price (as defined in the PPA), and (ii) advises the Rating Agencies of the confidential nature of the PPA.

Please have an authorized representative sign below to confirm that Dillon will abide by the terms of this letter and the Non-Disclosure Agreement.

Very truly yours,

  
Kenneth Pickrahn

ACKNOWLEDGED AND AGREED: PPM Energy, Inc., as Sole Member and Manager of

DILLON WIND LLC

By: 

Name: Don Furman

Donald N. Furman  
Senior Vice President

Date: 7/11/06

P.O. Box 800  
2244 Walnut Grove Ave.  
Rosemead, CA 91770

**EXHIBIT J**

**TIME OF DELIVERY PERIODS AND ENERGY PAYMENT ALLOCATION FACTORS**

<u>Time of Delivery Periods ("TOD Periods")</u>			
<i>TOD Period</i>	<i>Summer Jun 1<sup>st</sup> – Sep 30<sup>th</sup></i>	<i>Winter Oct 1<sup>st</sup> – May 31<sup>st</sup></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 & Holidays.
Super-Off-Peak	Not Applicable.	Midnight – 6:00 a.m.	Weekdays, Weekends & Holidays.

<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.



**EXHIBIT K****PROCEDURE FOR  
PARTIAL OR FULL RETURN OF DEVELOPMENT FEE****1. Seller's Request for Development Fee Refund.**

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

- (a) Termination pursuant to Sections 2.04(a), 2.04(b), or Section 5.05 as set forth in Section 3.04(c)(ii); or
- (b) Seller has completed installation of Wind Turbines pursuant to the Generating Facility and Site Description set forth in Exhibit A.

**2. Full Return of Development Fee for Termination of Agreement.**

Provided that SCE does not dispute Seller's Notice of request for Development Fee refund pursuant to Item 1(a) above, SCE shall return the Development Fee to Seller, or Letter of Credit to the issuing bank, within ten (10) Business Days of such Notice, unless SCE provides timely Notice to Seller that additional days are required to substantiate data. If the Development Fee is in the form of a Development Fee Guaranty Agreement, SCE shall surrender the original Guaranty Agreement to the Guarantor and send Seller and Seller's Guarantor Notice acknowledging that the Development Fee Guaranty is fully satisfied and discharged.

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

Unless SCE provides timely Notice to Seller that additional days are required to substantiate data, SCE shall within forty-five (45) days of Seller's Notice of request for Development Fee refund pursuant to Item 1(b):

- (a) Complete a site visit to verify the Generating Facility was developed in accordance with the Generating Facility and Site Description set forth in Exhibit A and to determine the Demonstrated Nameplate Contract Capacity based on the Generating Facility Capacity.
- (b) If the Demonstrated Nameplate Contract Capacity as determined in Item 3(a) above is greater than or equal to the Nameplate Contract Capacity, then Seller shall qualify to receive a full return of the Development Fee.
- (c) If the Demonstrated Nameplate Contract Capacity as determined in Item 3(a) above is less than the Nameplate Contract Capacity, then Seller shall qualify

to receive a return of only a portion of the Development Fee based upon the level of the Demonstrated Nameplate Contract Capacity.

- (d) Based upon the information in Item 3(a), calculate the amount of Development Fee refund due Seller pursuant to Sections 3.04(c) and 3.04(d).
- (e) Provide Notice to Seller of the amount of Development Fee being returned pursuant to Item 3(d) and the amount of Development Fee forfeited, as applicable.
- (f) Return any Development Fee due Seller if such Development Fee was posted in the form of cash.
- (g) Return the Letter of Credit to the issuing bank if the total amount of the posted Development Fee is due Seller. If Seller is only entitled to a partial return of the Development Fee SCE shall submit a drawing certificate on the Letter of Credit for the amount of Development Fee forfeited by Seller, after which SCE shall release the remaining balance of the Letter of Credit.
- (h) Return the original Development Fee Guaranty Agreement to the Guarantor and acknowledge its termination, full satisfaction and discharge if the total amount of the posted Development Fee is due Seller. If Seller is only entitled to a partial return of the Development Fee, SCE may submit a demand for payment to the Seller or the Seller's Guarantor. As soon it has received such payment, SCE shall return the original Guaranty Agreement to Guarantor and acknowledge its termination, satisfaction and discharge.

**EXHIBIT L****SELLER'S ESTIMATE OF LOST OUTPUT**

Lost Output, as used in Section 3.18, shall be estimated by Seller in accordance with the procedures described in this Exhibit L. Seller shall collect the measurement data and perform the engineering calculations specified below in one Microsoft Excel Workbook (the "Workbook") provided in a form and naming convention approved by SCE and Seller. The Workbook shall be designed to accommodate data and calculation results for all ten (10) minute periods of all Term Years. Seller shall update the Workbook each month and shall include the latest revision of the Workbook with its monthly Lost Output Report.

1. Log of Lost Output Events.

The Workbook shall identify the date, time, duration, cause and percentage by which the Generating Facility's output was curtailed for each Lost Output event.

2. Wind Speed Data Collection.

Seller shall record average ten (10) minute wind speeds, in increments of one half (0.5) meters per second, and ten (10) minute Metered Amounts in the Workbook on individual worksheets. Each worksheet shall be arranged with one column for the date, one column for the beginning time, one column for the weekday, one column for each recorded measurement for each Term Year and one row for each 10-minute period.

3. Generating Facility Power Curve.

Seller shall create a power curve table (the "Generating Facility Power Curve") on a dedicated worksheet that is arranged with one column for each Term Year and one row for each one half (0.5) meter per second wind speed. The table shall also include, as references, one additional column with the manufacturer's Wind Turbine power curve data for a single Wind Turbine and a second additional column which shows the results of multiplying the manufacturer's power curve for a single Wind Turbine by the total number of Generating Facility Wind Turbines.

The Generating Facility Power Curve estimate of the Metered Amounts which could be produced by the Generating Facility at each one half (0.5) meter per second wind speed shall be calculated by Seller as the simple average of all the Metered Amount data points at each of the one half (0.5) meter per second wind speeds during the applicable Term Year.

Seller shall also create a single chart which plots all of Generating Facility Power Curves. The chart shall include one data series for each Term Year and one data

series for the power curve derived by multiplying the manufacturer's power curve for a single Wind Turbine by the total number of Generating Facility Wind Turbines.

4. Seller's Estimate of Lost Output.

Seller shall add a new worksheet to the Workbook at the beginning of each Term Year in order to calculate the Lost Output amounts. Each Term Year worksheet shall include one column for the date, one column for the time, one column for the weekday, one column for the actual wind speeds, one column for Seller's estimate of the Metered Amounts that could have been produced by the Generating Facility during the Lost Output event, one column for identifying periods associated with the West of Devers Transmission Upgrades, one column for identifying periods associated with curtailments under subsection (c) of the definition of Lost Output, and one row for each ten (10) minute period.

Seller's initial estimate of Lost Output and SCE's payment for any Lost Output under Section 4.02(d), for the first eleven (11) months of the first Term Year, shall be based on the power curve derived by multiplying the manufacturer's power curve for a single Wind Turbine by the total number of Generating Facility Wind Turbines and adjusting the results for the estimated impacts of one wind turbine on another and for electric losses.

Seller's initial estimate of Lost Output and SCE's payment under Section 4.02(d), for the first eleven (11) months of any Term Year other than the first Term Year, shall be based on the Generating Facility Power Curve derived for the previous Term Year.

Seller's final estimate of Lost Output and SCE's payment for any Lost Output under Section 4.02(d) for the twelfth (12<sup>th</sup>) month of any Term Year and SCE's recalculation for any Lost Output for the first eleven (11) months of all Term Years, shall be based upon the Generating Facility Power Curve derived for the Term Year for which the Lost Output is being calculated.

5. Assignment of Lost Output Estimate to an Independent Consultant.

The Parties can by mutual agreement elect to have the estimate of Lost Output prepared by an independent consultant.

**EXHIBIT M****ISO CHANGE COST PAYMENT CALCULATION**1. Introduction.

ISO Change Cost for any Term Year shall be calculated in accordance with the formula set forth below. ISO Change Cost for any Term Quarter shall be calculated using the same formula, except that Term Quarter Hour Last and Term Quarter Hour #1 shall be used in the summation.

$$\text{ISO CHANGE COST} = \sum_{\text{TermYearHour}\#1}^{\text{TermYearHourLast}} [A_{\text{before}} - B_{\text{before}} - C_{\text{before}} - D_{\text{before}}] - \sum_{\text{TermYearHour}\#1}^{\text{TermYearHourLast}} [A_{\text{after}} - B_{\text{after}} - C_{\text{after}} - D_{\text{after}}]$$

Where:

- (a) As used herein, "Seller's Actual Revenue" means the total of payments and tax benefits received by Seller in any Term Quarter or Term Year (as applicable) consisting of the following:
- (i) Payments received by Seller during the Term Quarter or Term Year (as applicable) pursuant to Article Four, excluding any payment adjustments pursuant to Section 4.02(c); plus
  - (ii) PTC *Before-Tax* Benefit (calculated in accordance with the formula set forth in Exhibit P) attributable to Seller's generation of electric energy during the Term Quarter or Term Year (as applicable).
- (b) As used herein, "Seller's Adjusted Revenue" means the calculated amount of Seller's revenue in any Term Quarter or Term Year (as applicable) based on adjustments to Seller's Actual Revenue in order to measure the hypothetical amount of revenue and PTC *Before-Tax* Benefit that would have been realized by Seller during the Term Quarter or Term Year (as applicable) using the ISO's methodology and procedures that would have applied either *as of the Effective Date* or *before*:

- (a) Any Change in ISO Tariff as compared to the ISO's methodology and procedures that apply during the Term Quarter or Term Year (as applicable), as specified for each factor below; and
- (b) The impact of any of SCE's decisions regarding Seller's bids into ISO-administered markets under Section 11.04(a).

a. Formula Factors.

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

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

$A_{\text{before}}$  = Seller's Adjusted Revenue based on calculating the adjustments to Seller's Actual Revenue, either up or down, under the following circumstances, taking into account the impact of any of SCE's decisions regarding Seller's bids into ISO-administered markets under Section 11.04(a):

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

Upon the occurrence of congestion on the transmission system, changes to Seller's actual Scheduled Amounts during the Term Quarter or Term Year (as applicable) that would directly result from applying the ISO's methodology and procedures in effect *immediately prior* to any Change in ISO Tariff for allocating transmission capacity; and

(ii) Changes In Loss Methodology Which Impact Scheduled Amounts.

Changes in Seller's actual Scheduled Amounts during the Term Quarter or Term Year (as applicable) that would result from Seller using the ISO's methodology and procedures *as of the Effective Date* for Seller self-providing all ISO assessed transmission losses in Seller's Scheduled Amounts by applying the GMM (using the average values of GMM for the twelve (12) calendar months *immediately prior* to any Change in ISO Tariff), to the Metered Amounts.

Nothing in the preceding paragraph shall be interpreted as a restriction on Seller's ability to self-provide or not self-provide for ISO assessed transmission losses.

$A_{\text{after}}$  = Seller's Actual Revenue during the Term Quarter or Term Year (as applicable).



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

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

$B_{\text{after}}$  = Actual amount of ISO charges paid by Seller during the Term Quarter or Term Year (as applicable) directly 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.

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

$C_{\text{after}}$  = Actual amount of ISO charges paid by Seller during the Term Quarter or Term Year (as applicable) directly relating to transmission losses for delivery of Product from the Generating Facility to the Delivery Point.

(d) Changes in ISO Tariff Impacting PIRP.

$D_{\text{before}}$  = Calculated amount of ISO charges that would have been paid by Seller during the Term Quarter or Term Year (as applicable) for Uninstructed Imbalance Energy under the Participating Intermittent Resource Program using the ISO's methodology and procedures *as of the Effective Date* based on the actual Scheduled Amounts and Uninstructed Imbalance Energy during the Term Quarter or Term Year (as applicable) attributable solely to the Generating Facility.

$D_{\text{after}}$  = Actual ISO charges paid by Seller during the Term Quarter or Term Year (as applicable) for Uninstructed Imbalance Energy, or the successor charge type that represents the difference between Scheduled and Metered Amounts, directly resulting from changes in, or termination of, the Participating Intermittent Resource Program.

b. Change Cost Payments.

(a) 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.

(b) 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:

$$\text{ISO CHANGE COST PAYMENT TO SCE} = (-1 \times E) - F$$

Where:

E = ISO Change Cost as calculated above.

F = ISO Change Cost Threshold Amount.

**EXHIBIT N**

**THIS EXHIBIT INTENTIONALLY LEFT BLANK**

**EXHIBIT O****WARRANTY AVAILABILITY LOST PRODUCTION PAYMENT**

If Seller fails to meet the Warranty Availability Guarantee when calculated under Section 3.15, then Seller shall be subject to a Warranty Availability Lost Production Payment in accordance with the provisions of Section 3.15, calculated as follows:

$$\text{WARRANTY AVAILABILITY LOST PRODUCTION PAYMENT} = [(A) \times (B - C)]$$

Where:

- A = Warranty Availability Lost Production in MWh for the period in question.
- B = Simple average of the Market Price for the period being calculated in \$/MWh.
- C = Energy Price for the period being calculated in \$/MWh .

In the above calculation, the result of "(B - C)" shall not be greater than twenty dollars (\$20) per MWh.

**EXHIBIT P****CALCULATION OF PTC BEFORE-TAX BENEFIT**

Any PTC *Before-Tax* Benefit shall be calculated in accordance with the following methodology for each Term Year or Term Quarter in which:

1. Seller makes a claim for payment in accordance with Section 4.02(d); or
2. Either Party makes a claim for ISO Change Cost Payment in accordance with Section 11.03.

The calculation of the PTC *Before-Tax* Benefit shall be based upon the following formula:

$$PTC_{\text{before}} = PTC_{\text{after}} / (1 - \text{Effective Tax Rate})$$

Where:

$PTC_{\text{before}}$  = PTC *Before-Tax* Benefit rate in dollars per MWh.

$PTC_{\text{after}}$  = PTC rate for the Term Year or Term Quarter in dollars per MWh.

%Federal = Highest marginal US Federal income tax rate of thirty five percent (currently 35.0%).

%State = Highest marginal California State Franchise Tax rate of corporations, other than banks and financial institutions, (currently nine point three percent (9.3%).)

Effective Tax Rate =  $[\%State + \%Federal - (\%State \times \%Federal)]$

For example, based on rates currently in effect as of the Effective Date:

$$= [9.3\% + 35.0\% - (9.3\% \times 35.0\%)]$$

$$= 41.045\%$$

**EXHIBIT Q****DESCRIPTION OF WEST OF DEVERS TRANSMISSION UPGRADES**

The "West of Devers Transmission Upgrades" includes rebuilding and reconductoring four (4) 230 kV lines west of SCE's Devers Substation located in Palm Springs. The 230 kV system west of Devers, existing as of the Effective Date, includes two (2) 230 kV circuits connecting the Devers and Vista substations (Devers-Vista No. 1 and No. 2 230 kV lines) and two (2) 230 kV circuits connecting the Devers Substation with the San Bernardino Substation (Devers-San Bernardino No. 1 and No. 2 230 kV lines). The junction of the Devers-Vista right-of-way and the Devers-San Bernardino right-of-way is called the San Bernardino Junction and is approximately 3 miles south of San Bernardino Substation.

As of the Effective Date, the four (4) 230 kV lines west of Devers are built on three sets of structures (one set of double-circuit towers and two sets of single-circuit towers). The proposed improvements would be constructed within SCE's existing right-of-way and would include:

1. Removal of the existing 40 mile single-circuit 230 kV line between the Devers Substation and the San Bernardino Junction.
2. Removal of the existing 40 mile single-circuit lattice steel 230 kV line between the Devers Substation and the San Bernardino Junction.
3. Construction of a new 40 mile double-circuit 230 kV line between the Devers Substation and the San Bernardino Junction on existing right-of-way.
4. Reconductoring and modifying the existing double-circuit 230 kV tower line between the Devers Substation and the San Bernardino Junction (3 miles), and between the Vista Substation and the San Bernardino Junction (5 miles). A number of existing towers may require raising and/or reinforcement. Additional structures may be inter-set between existing structures at some locations.

As of the Effective Date, SCE's tentative plan, which is subject to modification, is to commence construction of the West of Devers Transmission Upgrade in February 2007 and to complete construction in March 2009.

**EXHIBIT R****DEFINITION OF WIND TURBINE AVAILABILITY**

“Wind Turbine Availability,” or “Turbine Availability” for each Wind Turbine shall be defined in accordance with the turbine availability warranty that Seller obtains from the Wind Turbine supplier for the Project, such that “Wind Turbine Availability” or “Turbine Availability” under this Agreement shall be determined in the same manner as turbine availability is determined under the turbine supply agreement for the Project. No later than ninety (90) days before Initial Operation, Seller shall provide to SCE true and correct copies of all provisions of the turbine supply agreement concerning, or which are reasonably necessary for SCE to understand, the manner in which wind turbine availability is calculated, along with an Exhibit R based on such provisions. Such Exhibit R shall become a part of this Agreement as long as it determines Wind Turbine Availability in the same manner as the turbine supply agreement. End

## FRAUD AWARENESS FOR DEPARTMENT MANAGERS

In design, operation, and monitoring of the enterprise's systems of internal control in their area, department managers need to be aware of indicators of fraud, abuse, and waste in order to contribute to deterrence and detection of fraud and abuse and to contain costs.

- An important step for management to take in the prevention and detection of fraud is to recognize that fraud exists and that any organization can become a victim of fraud.
- There are many "indicators" of conditions that provide the initial recognition that something may be wrong and that further attention is needed to confirm and if necessary correct the wrong. Knowledge of the fraud indicators by all employees, especially management personnel, coupled with a need to be sensitive to the conditions that invite fraud, abuse, and waste are needed to detect the problem.
- The following are some conditions and situations that, if allowed to exist, lend themselves to fraud, waste, and abuse:
  - a. Concentration of authority over, and responsibility for, resources and activities of an entire process in one person.
  - b. Inadequate feedback on results of projects, programs, or operations.
  - c. Lack of standards for judging the results of projects, programs, or operations.
  - d. Lack of independent verification of the accuracy of records, transactions, and data.
  - e. Vague and confusing procedures.
  - f. Inadequate physical safeguards over resources.
  - g. Inability to identify responsibility.
  - h. Lack of adequate supervision.
  - i. Changes in an employee's behavior.
  - j. Unreasonable budgetary and procurement requirements.
  - k. Failure to strictly enforce contract provisions.



- l. Failure to correct deficiencies identified by existing control procedures and systems.
  - m. Unbalanced management incentives that promote an excessive level of interest in increasing earnings and stock appreciation.
  - n. Financial instability and adverse economic conditions.
  - o. Existence of complex, poorly understood transactions.
  - p. Existence of excessive or unusual related-party transactions.
  - q. Failure to take appropriate disciplinary action in response to ethics violations and departures from approved procedures.
- Mere compliance with accepted enterprise procedures does not necessarily prevent fraud. One of the best ways for management to detect fraud is to get feedback from employees regarding situations that are questionable. Employees need to know that department managers are committed to combating fraud, waste, and abuse.
  - Let employees know that if something is going wrong, management wants to know about it and will have it corrected. Once a manager becomes aware of, or suspects, an irregularity, inform executive management and know that the internal auditing and internal security organizations are available to assist in resolving the matter.
  - Periodically communicate to all employees the audit committee established procedures for anonymously reporting complaints regarding ethics, accounting, auditing, and other matters.

**AMENDMENT NO. 1 TO  
AMENDED AND RESTATED  
RENEWABLE POWER PURCHASE AND SALE AGREEMENT**

This Amendment No. 1 to Amended and Restated Renewable Power Purchase and Sale Agreement (this "Amendment") is made this 1st day of October, 2007, by and among Dillon Wind LLC, an Oregon limited liability company ("Seller"), and Southern California Edison Company, a California corporation ("SCE"). Each of Seller and SCE are herein sometimes referred to as a "Party" and collectively as the "Parties". Capitalized terms used in this Amendment that are not otherwise defined herein shall have the meaning given to such term in the Amended and Restated Renewable Power Purchase and Sale Agreement, dated August 16, 2006, by and between Seller and SCE (the "Agreement").

**RECITALS**

WHEREAS, the Parties have entered into the Agreement; and

WHEREAS, the Parties desire to amend the Agreement as more fully set forth in this Amendment.

NOW, THEREFORE, for and in consideration of the covenants and agreements set forth herein, the receipt and sufficiency of which is hereby confirmed, the Parties agree as follows:

1. The paragraph under Special Condition B of the Agreement shall be replaced in its entirety with the following: "The Startup Deadline shall be **March 15, 2008**, or such other date as provided in this Agreement or as may be agreed to in writing signed by both Parties."
2. Section 2.04(b)(vi) of the Agreement shall be replaced in its entirety with the following: "If SCE does not receive the CPUC Section 851 Approval on or before March 1, 2008, Seller shall have the right to terminate this Agreement by providing Notice to SCE not later than April 30, 2008."
3. Section 2.04(b)(ix) of the Agreement shall be replaced in its entirety with the following: "If the Firm Operation Date and the Startup Deadline are extended under Section 3.04(b), or under Article Five due to Force Majeure, such that the Generating Facility will not be placed into service for PTC purposes before December 31, 2008, and (ii) Federal Production Tax Credit Legislation has not been enacted before 11:59 p.m. on December 31, 2008, then Seller shall have the right to terminate this Agreement by giving such Notice to SCE not later than June 30, 2009."
4. The following Section 2.04(b)(xi) shall be added to the Agreement: "If a court order granting a preliminary injunction, other injunctive relief, or suspension is in effect which prevents Seller from constructing or operating the Generating Facility and which Seller reasonably concludes cannot be terminated or dissolved with the exercise of Seller's diligent

efforts within ninety (90) days after the issuance of such preliminary injunction, other injunctive relief, or suspension, Seller shall have the right to terminate this Agreement by giving such Notice to SCE, *provided* that such Notice must be given by no later than October 31, 2008."

5. The following shall be added following the fourth paragraph of Section 3.04(b) of the Agreement:

"If

(i) the CPUC does not, on or before November 16, 2007, issue a final decision granting SCE's request for approval and authorization to grant the Option Agreement to Seller (unless SCE, by October 15, 2007, agrees to allow Seller to perform construction work on land covered by the Option Agreement pending the issuance of such a CPUC decision),

(ii) the SCE-Constructed Interconnection Facilities (as defined in that certain Interconnection Facilities Agreement between Seller and SCE (the "IFA")) are not completed within twenty one (21) days after the completion of the Dillon-Constructed Interconnection Facilities (as defined in the IFA), or

(iii) a temporary restraining order, preliminary injunction or other injunctive relief is in effect which delays the construction of the Generating Facility,

Then:

Seller shall have the right to extend the Startup Deadline on a day-for-day basis for each day that

(x) the CPUC final decision described in item (i) above is delayed past November 16, 2007, (unless SCE has agreed to the construction as described in item (i) above),

(y) the completion of the SCE-Constructed Interconnection Facilities is delayed past the twenty-one (21) day period described in item (ii) above, or

(z) the construction of the Generating Facility is delayed due to such injunctive relief;

*provided that* should any of the conditions described in items (i)-(iii) above, or an event of Force Majeure, reasonably require Seller to demobilize its forces and the equipment necessary for performing the construction of the Generating Facility, Seller shall, in addition to such right for a day-for-day extension of the Startup Deadline provided herein, or an extension provided for Force Majeure under Article V, have the right to extend the Startup Deadline by fourteen (14) days."

6. The term "one percent (1%)" appearing in the first sentence of the third paragraph of Section 3.04(b) of the Agreement shall be replaced with "one and a half percent (1.5%)".

7. Except as expressly set forth in this Amendment, the Agreement remains unchanged and, as so modified, the Agreement shall remain in full force and effect.

8. Each Party expressly reserves all of its rights under the Agreement.

9. The terms and provisions of this Amendment shall be binding and inure to the benefit of and be enforceable by the successors and assigns of the Parties, whether so expressed or not.

10. If any provision or provisions of this Amendment shall be held to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby.

11. This Amendment shall be governed and construed in accordance with the laws of the State of California without regards to any conflict of laws provisions thereof.

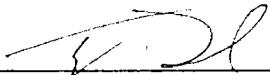
12. This Amendment sets forth the entire agreement of the parties hereto with respect to its subject matter, and supersedes all previous understandings, written or oral, with respect thereto.

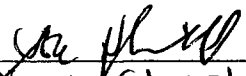
*[signature page follows]*

IN WITNESS WHEREOF, the Parties have caused this Amendment to be executed by their duly authorized representatives in multiple counterparts, without the necessity that all Parties execute the same counterpart, each of which is an original and all of which constitute the same instrument, to be effective as of the date first above written.

**DILLON WIND LLC,**  
an Oregon limited liability company

**SOUTHERN CALIFORNIA EDISON  
COMPANY,** a California corporation

By:   
Name: Ty Daul  
Title: Vice President  
Date: 10/1/07

By:   
Name: Stuart R. Hemphill  
Title: Director  
Renewable and Alternative Power  
Date: 10/1/07

IN WITNESS WHEREOF, the Parties have caused this Amendment to be executed by their duly authorized representatives in multiple counterparts, without the necessity that all Parties execute the same counterpart, each of which is an original and all of which constitute the same instrument, to be effective as of the date first above written.

**DILLON WIND LLC,**  
an Oregon limited liability company

**SOUTHERN CALIFORNIA EDISON  
COMPANY,** a California corporation

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

By: Stuart R. Hemphill  
Name: Stuart R. Hemphill  
Title: Director  
Renewable and Alternative Power  
Date: 10/1/07

APPROVED  
**STEPHEN E. PICKETT**  
Sr. Vice President and  
General Counsel  
By: [Signature]  
Attorney  
October 1, 2007