



SOUTHERN CALIFORNIA
EDISON

An *EDISON INTERNATIONAL* Company

RENEWABLE POWER PURCHASE AND SALE AGREEMENT

between

SOUTHERN CALIFORNIA EDISON COMPANY

and

IMPERIAL VALLEY RESOURCE RECOVERY COMPANY, L.L.C.

(QFID# 1209)

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RENEWABLE POWER PURCHASE AND SALE AGREEMENT

between

SOUTHERN CALIFORNIA EDISON COMPANY

and

IMPERIAL VALLEY RESOURCE RECOVERY COMPANY, L.L.C. (QFID# 1209)

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

This Agreement is entered into between:

- (i) **Southern California Edison Company** ("SCE"), a California corporation, whose principal place of business is at 2244 Walnut Grove Avenue, Rosemead, California 91770, and
- (ii) **Imperial Valley Resource Recovery Company, L.L.C.** ("Seller"), a Delaware limited liability company, whose principal place of business is at 168 E. Center Street, Ithaca, Michigan 48847.

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

Seller is willing to refurbish, 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 as specified herein 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 Generating 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 shall have the meanings set forth in Exhibit A.

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

ARTICLE ONE. SPECIAL CONDITIONS

1.01 Generating Facility.

- (a) Name: **Imperial Valley Resource Recovery.**
- (b) Location of Site: 3505 Highway 111, Imperial, California 92251 as further described in Exhibit B.
- (c) Eligible Renewable Energy Resource Type: **Biomass, Wood**
- (d) Contract Capacity: **16.400 MW.**

The Contract Capacity may be reduced as set forth in Section 3.04(d).

- (e) 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, in kWh per Term Year

= A x B x C

Where:

- A = Contract Capacity in kW (i.e., MW x 1000).
- B = 92% capacity factor in Non-Major Maintenance Years and 86% capacity factor in Major Maintenance Years.
- C = 8,760 hours per year.

1.02 Startup Deadline.

The Startup Deadline shall be twelve (12) months after CPUC Approval, or such other date as provided in this Agreement or as may be agreed to in a writing signed by both Parties.

1.03 Firm Operation Date.

The Firm Operation Date shall be the date that is six (6) months after the Selected Date, plus any additional days for Force Majeure as provided in Section 5.04, or as may be agreed to in a writing signed by both Parties.

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1.04 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 one hundred twenty (120) months (ten (10) years) from the month of the Firm Operation Date.

1.05 Energy Price.

The Energy Price for each Term Year shall be as provided below:

<u>Term Year</u>	<u>\$/MWh</u>
From Initial Operation to beginning of Term Year 1	73.38
1	73.38
2	74.11
3	74.85
4	75.60
5	76.36
6	77.12
7	77.89
8	78.67
9	79.46
10	80.25

1.06 Collateral Threshold.

(a) The Seller's Collateral Threshold shall be \$0 (zero).

1.07 Seller's Guarantor.

(a) Guarantor: [Guarantor Name, if any]

(b) Guaranty Amount: [*Dollar amount text*] dollars (**[\$Number]**)

(c) Cross Default Amount: [\$_____, if any]

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1.08 Seller's Debt to Equity Ratio.

Seller's Debt to Equity Ratio for each Term Year, calculated at the beginning of each such Term Year, and continuing throughout each such Term Year, shall be as provided below:

Term Year	Seller's Debt to Equity Ratio
1	6.0 to 1.0
2	5.1 to 1.0
3	4.6 to 1.0
4	3.2 to 1.0
5	2.3 to 1.0
6	1.6 to 1.0
7	1.2 to 1.0
8	0.7 to 1.0
9	0.3 to 1.0
10	0.0 to 1.0

Seller's Debt and Equity amounts can be referenced on Seller's financial statements.

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

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

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ARTICLE TWO. TERM AND CONDITIONS PRECEDENT; TERMINATION

2.01 Effective Date.

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

2.02 CPUC Filing and Approval.

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

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

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

SCE shall have no obligation to seek rehearing or to appeal a CPUC decision which:

- (a) Fails to approve this Agreement; or
- (b) Contains findings required for CPUC Approval.

2.03 Conditions Precedent to Commencement of Term.

(a) Commencement of Term.

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

- (i) SCE has obtained or waived CPUC Approval, as provided herein;
- (ii) Seller has executed all necessary Transmission Provider and Scheduling Coordinator agreements;
- (iii) Seller has provided the TLF used by the Transmission Provider in the administration of the transmission service agreement for the Generating Facility;
- (iv) SCE has determined, in its reasonable discretion, that the SCE Meter installed at the Generating Facility is operational;
- (v) Seller has posted with SCE the Performance Assurance required under Section 8.02(a)(i);

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- (vi) SCE and Seller have executed all Security Documents required by Section 8.05;
 - (vii) Seller has furnished to SCE the insurance documents required under Section 10.11(b); and
 - (viii) Seller has achieved Initial Operation.
- (b) Initial Operation.

Initial operation of the Generating Facility ("Initial Operation") shall be deemed to have been achieved on the date selected by Seller (the "Selected Date") to begin Scheduling and delivering Product to SCE in accordance with this Section 2.03(b).

Seller shall provide at least three (3) Business Days advance Notice to SCE of the Selected Date.

- (i) The Selected Date shall be no later than twelve (12) months from CPUC Approval.

In addition, as of the Selected Date:

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

2.04 Termination Rights of Both Parties.

- (a) CPUC Approval.

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

If either Party exercises a termination right, as set forth in this Section 2.04(a), neither Party shall be responsible for making a Termination Payment to the other Party.

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(b) Uncured Defaults.

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

(c) End of Term.

At the end of the Term as set forth in Section 1.04, this Agreement shall automatically terminate.

2.05 Rights and Obligations Surviving Termination.

(a) Survival of Rights and Obligations Generally.

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

- (i) The obligation of Seller to pay the Energy Replacement Damage Amount under Section 3.05(b);
- (ii) The obligation to make a Termination Payment under Section 6.03;
- (iii) The indemnity obligations to the extent provided in Section 10.03;
- (iv) The obligation of confidentiality set forth in Section 10.10;
- (v) The right to pursue remedies under Section 6.02;
- (vi) The right to receive a Termination Payment under Section 6.03;
- (vii) The limitation of damages under Article Seven;
- (viii) The obligation of SCE to make Energy Payments for energy Scheduled and delivered to SCE prior to termination under Section 4.02;
- (ix) The covenants and indemnifications regarding the limitations on Seller's and Seller's Affiliates ability to offer, make or agree to third party sales as set forth in Section 2.05(b); and

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- (x) The obligation of Seller to post Performance Assurance under Section 8.02.

- (b) Limitations on Seller's Ability to Make or Agree to Third Party Sales from the Generating Facility after Certain Terminations of this Agreement.

If Seller terminates this Agreement, as provided in Section 5.05 (based upon a Force Majeure as to which Seller is the Claiming Party), or if SCE terminates this Agreement as provided in Section 3.04(b), neither Seller nor Seller's Affiliates may sell, or enter into an agreement to sell, electric energy, Environmental Attributes, Capacity Attributes, or Resource Adequacy Benefits associated with or attributable to a generating facility installed at the Site to a party other than SCE for a period of two (2) years following the effective date of such termination.

This prohibition on contracting and sale shall not apply if, prior to entering into the contract or making a sale to a party other than SCE, Seller or Seller's Affiliates provides SCE with a written offer to sell the electric energy, Environmental Attributes, Capacity Attributes and Resource Adequacy Benefits to SCE on terms and conditions materially similar to the terms and conditions contained in this Agreement and SCE fails to accept such offer within forty five (45) days after SCE's receipt thereof.

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

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

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

Seller shall use commercially reasonable efforts and Prudent Electrical Practices to Schedule and convey the *entire* Delivered Amounts during the Term to SCE and SCE shall take delivery of such Scheduled Amounts.

In addition, Seller shall, at its own cost, dedicate and convey any and all Environmental Attributes, Capacity Attributes and Resource Adequacy Benefits generated or produced by Seller during the Term to SCE and SCE shall be given sole title to all such Capacity Attributes, Environmental Attributes and Resource Adequacy Benefits.

If Seller receives any tradable Environmental Attributes based on the greenhouse gas reduction benefits or other emission offsets attributed to its fuel usage, it shall provide SCE with sufficient Environmental Attributes to ensure that there are zero net emissions associated with the production of electricity from the Generating Facility.

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

Such actions shall include, without limitation:

- (a) Cooperating with and encouraging the regional entity responsible for resource adequacy administration to certify or qualify the Contract Capacity for resource adequacy purposes;
- (b) Testing the Generating Facility in order to certify the Contract Capacity for resource adequacy purposes;
- (c) Complying with all current and future provisions of the ISO Tariff that address resource adequacy, including but not limited to provisions regarding performance obligations and penalties; and
- (d) Committing to SCE the full Contract Capacity.

SCE will have the exclusive right, at any time or from time-to-time during the Term, to sell, assign, convey, transfer, allocate, designate, award, report or otherwise provide any and all such Capacity Attributes, Environmental Attributes or Resource Adequacy Benefits to third parties; provided, however, any such action shall not constitute a transfer of, or release SCE of its obligations under this Agreement.

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

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

From the Effective Date, Seller shall not sell any Product to any entity other than SCE, except that:

- (e) Seller shall have the right to sell to a third party or into the ISO real-time market any electric energy generated by the Generating Facility before the beginning of the Term, and Environmental Attributes and Capacity Attributes related to such electric energy generation, and to retain all proceeds of such sales; and
- (f) 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 grants, pledges, assigns and otherwise commits to SCE the full Contract Capacity in order for SCE to meet its resource adequacy obligations under any Resource Adequacy Rulings.

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

- (a) Has not used, granted, pledged, assigned or otherwise committed; and
- (b) Will not, 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.

3.03 Seller's Obligations to Schedule and Deliver.

Seller shall be responsible for obtaining and maintaining any and all Scheduling, interconnection, metering 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.

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Seller shall 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 D.

Seller shall cause its SC to unbundle the SC-to-SC Trades to SCE when the current Change in ISO Tariff, known as Market Redesign and Technology Update "(MRTU)", becomes effective.

Once MRTU becomes effective, Seller shall cause its SC to ensure that the SC-to-SC Trades are specific to the Unique Interchange ID.

3.04 Agreement Deposit.

(a) Posting the Agreement Deposit.

Seller shall post and thereafter maintain the Agreement Deposit equal to twenty dollars (\$20) for each kilowatt of Contract Capacity specified in Section 1.01(d).

One half of the Agreement Deposit shall be posted within thirty (30) days following the Effective Date, with the remainder to be posted within thirty (30) days following CPUC Approval.

The Agreement Deposit shall be held by SCE as security for Seller maintaining adequate progress in development of the Generating Facility in accordance with the Milestone Schedule, as set forth in Exhibit G, to meet the Startup Deadline and installing and demonstrating the Contract Capacity by the applicable Firm Operation Date.

The Agreement Deposit shall be in the form of either a cash deposit or a Letter of Credit.

Any Agreement Deposit posted in cash shall bear simple interest at a rate equal to the Federal Funds Effective Rate. The calculation and payment of any such interest shall be made in accordance with the procedure specified in Section 4.06 of this Agreement.

If Seller establishes the Agreement Deposit by means of a Letter of Credit, such Letter of Credit shall be provided substantially in the form of Exhibit N.

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(b) Forfeiture of the Agreement Deposit
for Failure to Meet Startup Deadline; Extension of the Startup Deadline.

Subject to Seller's right to extend the Startup Deadline as provided in this Section 3.04(b), in the event that Initial Operation does not occur on or before the Startup Deadline, SCE shall be entitled to retain the entire Agreement Deposit and terminate this Agreement and, subject to Section 2.05(b), neither Party shall have liability for damages for failure to deliver or purchase Product after the effective date of such termination.

Seller may elect to extend the Startup Deadline by paying to SCE Daily Delay Liquidated Damages in an amount equal to one percent (1%) of the Agreement Deposit per day for each day (or portion thereof) from and including the Startup Deadline to and excluding the Selected Date ("Daily Delay Liquidated Damages").

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

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

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

Seller shall be entitled to a refund (without interest) 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 Agreement Deposit.

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

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- (i) Subject to Seller's achievement of Initial Operation by the Startup Deadline or any extended Startup Deadline as provided in Section 3.04(b), Seller demonstrates the full Contract Capacity in accordance with the procedure set forth in Exhibit L on or before the Firm Operation Date; or
 - (ii) If this Agreement is terminated in accordance with Sections 2.04(a) or 5.05; *provided that*, a termination under Section 5.05 shall only entitle Seller to a return of the Agreement Deposit if the termination is based upon a Force Majeure which prevents Seller from achieving Initial Operation by the Startup Deadline or demonstrating full Contract Capacity by the Firm Operation Date.
- (d) Deficient Installation of Contract Capacity:
Partial Forfeiture and Partial Return of the Agreement Deposit.

If, on or before the Firm Operation Date, Seller has achieved Initial Operation by the Startup Deadline as provided in Section 3.04(b), but is only able to demonstrate a portion of the Contract Capacity in accordance with the procedure set forth in Exhibit L (the "Demonstrated Contract Capacity") by the Firm Operation Date, *then* Seller shall only be entitled to a return of the portion of the Agreement Deposit equal to the product of twenty dollars (\$20) per kilowatt times the kilowatts of Demonstrated Contract Capacity.

In accordance with the procedure set forth in Exhibit L, Seller shall forfeit and SCE shall be entitled to retain the balance of the Agreement Deposit.

In addition, the Contract Capacity shall be reduced to the Demonstrated Contract Capacity as of the Firm Operation Date, the Expected Annual Net Energy Production shall be adjusted pursuant to Section 1.01(e), and neither Party shall have any liability for failure to purchase or deliver Product associated with or attributable to capacity in excess of the Demonstrated Contract Capacity ("Unincluded Capacity");

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

The prohibition on contracting and sale in the preceding sentence shall not apply if, prior to entering into the contract or making a sale to a party other than SCE, Seller or Seller's Affiliates provide SCE with a written offer to sell

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the electric energy, Environmental Attributes, Capacity Attributes and Resource Adequacy Benefits related to Unincluded Capacity to SCE on terms and conditions materially similar to or no less favorable to SCE than, the terms and conditions contained in this Agreement and SCE fails to accept such offer within forty five (45) days after SCE's receipt thereof.

3.05 Seller's Energy Delivery Performance Obligation.

(a) Performance Requirements.

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

(i) Seller's Annual Energy Delivery Obligation.

Seller's Annual Energy Delivery Obligation shall be equal to ninety percent (90%) of the Expected Annual Net Energy Production identified in Section 1.01(e).

(ii) Event of Deficient Energy Deliveries.

At the end of each Term Year if the sum of Seller's Metered Amounts plus any Lost Output during the Term Year does not equal or exceed Seller's Annual 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 Annual Energy Delivery Obligation would be difficult or impossible to determine, or that obtaining an adequate remedy would be unreasonably time consuming or expensive, and therefore agree that Seller shall pay SCE as liquidated damages the "Energy Replacement Damage Amount," which is intended to compensate SCE for Seller's failure to perform, irrespective of whether SCE actually purchased such replacement electric energy by reason of Seller's failure to perform.

Within ninety (90) days after the end of the applicable Term Year, SCE shall calculate any Energy Replacement Damage Amount as set forth in Exhibit F, and shall provide Notice to Seller of any Energy Replacement Damage Amount owing, including a detailed explanation of, and rationale for, its calculation methodology, annotated work papers and source data.

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Seller shall have thirty (30) days after receipt of SCE's Notice to review SCE's calculation 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 work papers 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.

If the Parties are unable to resolve a dispute regarding any Energy Replacement Damage Amount within thirty (30) days after the sending of a Notice of dispute by Seller, either Party may submit the dispute to mediation and/or 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 convey all electric energy generated by the Generating Facility and all Environmental Attributes and Capacity Attributes to SCE during the Term, as provided in Section 3.01 and Resource Adequacy Benefits as provided in Section 3.02.

3.06 Metering.

(a) SCE Meter.

Seller, at Seller's expense, shall allow SCE to install meters and telecommunication equipment required by SCE to monitor the Generating Facility.

Such equipment (collectively the "SCE Meter") shall include, but not be limited to, one or more (in SCE's reasonable discretion) SCE approved revenue quality meter or meters, SCE approved data processing gateway, telemetering equipment and data acquisition services sufficient for monitoring and recording all electric energy produced by the Generating Facility less Station Use.

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(b) Access to SCE Meter.

Subject to Section 3.13, Seller shall grant SCE reasonable access to the meter(s) for meter readings and any purpose necessary to effectuate this Agreement.

3.07 Site Control.

- (a) On or before Initial Operation, Seller shall have Site Control, which means that Seller shall:
- (i) Own the Site;
 - (ii) Be the lessee of the Site under a Lease;
 - (iii) Be the holder of a right-of-way grant or similar instrument with respect to the Site; or
 - (iv) Be the managing partner or other person or entity authorized to act in all matters relating to the control and Operation of the Site and Generating Facility.
- (b) Seller shall provide SCE with prompt Notice of any change in the status of Seller's Site Control.

3.08 Site Location.

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

3.09 Design.

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

- (a) Designing and refurbishing the Generating Facility.
- (b) Using commercially reasonable efforts to acquire all Permits.
- (c) Providing to SCE, at least thirty (30) days prior to the anticipated Selected Date, the following Generating Facility information:
 - (i) Site plan drawings for the Generating Facility;
 - (ii) Electrical one line diagrams;
 - (iii) Major electrical equipment specifications;

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- (iv) General arrangement drawings;
 - (v) Longitude and latitude of each generator;
 - (vi) Photographs of the Site;
 - (vii) Aerial photographs of the Site, if any;
 - (viii) Process flow diagrams; and
 - (ix) Piping and instrumentation diagrams.
- (d) Providing SCE advance Notice at the earliest practicable time of any proposed changes in Seller's Generating Facility which such Notice shall 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:
 - (i) Real and reactive power production;
 - (ii) Changes in Operating status;
 - (iii) Protective apparatus operations; and
 - (iv) Any unusual conditions found during inspections.

Changes in generator output setting shall also be logged for Seller's generator(s) if it is "block-loaded" to a specific kW capacity.

In addition, Seller shall maintain complete records of the Generating Facility's fuel consumption if a biomass or landfill generating facility, steam consumption if a geothermal generating facility, maintenance performed, kilowatts, kilovars and kilowatt-hours generated and settings or adjustments of the generator control equipment and protective devices.

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

- (c) Seller shall keep a maintenance log for the Generating Facility that shall include information on electric energy production, fuel consumption and efficiency (if applicable), availability, maintenance (both breakdown and preventative) performed, outages, changes in operating status, inspections, manufacturer recommended services and replacement, electrical characteristics of the generators, control settings or adjustments of equipment and protective devices.

Information maintained pursuant to this Section 3.10(c) shall be kept for the Term of this Agreement and shall be provided or made available to SCE within twenty (20) days after any Notice.

- (d) Seller shall give Notice to SCE of Seller's:
- (i) Forecast of the timing and duration of scheduled maintenance and Seller's forecast of daily Delivered Amounts from the Generating Facility for the following four month period by January 1st, May 1st, and September 1st of each year during the Term by using SCE's automated telephone-based Interactive Voice Response System ("SCE's IVR"), at the telephone number(s) listed in Exhibit C, or an SCE-provided web-based system ("Web Client") when instructed through Notice by SCE;
 - (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 by using SCE's IVR, at the telephone number(s) listed in Exhibit C, or the Web Client when instructed through Notice by SCE; and
 - (iii) Unexpected or unscheduled outages by telephoning SCE's Generation Operations Center as soon as practicable, at the telephone number(s) listed in Exhibit C or the Web Client when instructed through Notice by SCE.

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

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- (e) Seller shall promptly prepare and provide to SCE upon request using SCE-provided software all reports of actual or forecasted outages that SCE may reasonably require for the purpose of enabling SCE to comply with Section 761.3 of the California Public Utilities Code or any Applicable Law mandating the reporting by investor-owned utilities of expected or experienced outages by electric energy generating facilities under contract to supply electric energy.
- (f) Seller shall comply with the Scheduling requirements and procedures set forth in Section 3.03 and Exhibit D at its sole expense.
- (g) At least thirty (30) days prior to the Initial Operation of the Generating Facility in parallel with the Transmission Provider's electric system, Seller shall provide SCE with all Generating Facility and metering information as may be requested by SCE, including, but not limited to, the following:

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 on site;
 - (v) Telephone number of control room;
 - (vi) Telephone number for operational issues;
 - (vii) Telephone number for administrative issues.
- (h) Seller shall have the right to conduct Major Maintenance in any two (2) Term Years of the ten (10) Term Years of this Agreement pursuant to the following requirements:
 - (i) Seller can not schedule Major Maintenance during the months June through September;
 - (ii) Major Maintenance can not straddle any two Term Years; and
 - (iii) Seller shall provide SCE six (6) months written Notice of any planned Major Maintenance and such Notice shall provide the following information:

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- (1) The expected start date; and
- (2) The expected end date.

3.11 Progress Reporting.

Seller shall use commercially reasonable efforts to meet the Milestone Schedule and avoid or minimize any delays in meeting such schedule. Seller shall provide a monthly written report of its progress toward meeting the Milestone Schedule using the procedures set forth in Exhibit H.

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

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

3.12 Provision of Information.

Seller shall promptly provide to SCE copies of:

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

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- (e) All monthly settlement invoices Seller receives from its Scheduling Coordinator pertaining to the Generating Facility in electronic form along with all supporting documents; and
- (f) Any reports, studies, or assessments done for it by an independent engineer.

3.13 SCE's Access Rights.

Seller shall grant SCE the right of ingress and egress to examine the Site and Generating Facility for any purpose reasonably connected with this Agreement or the exercise of any and all rights of SCE under Applicable Law or its tariff schedules and rules on file with the CPUC.

3.14 Obtaining and Maintaining CEC Certification and Verification.

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 and Verification throughout the Term.

3.15 Notice of Cessation or Termination of Service Agreements.

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

3.16 Lost Output Report.

(a) Monthly Report; SCE Review.

Commencing upon 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 in accordance with Exhibit M.

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

Upon SCE's request, Seller shall promptly provide to SCE any additional data and supporting documentation necessary for SCE to audit and verify any matters in the Lost Output Report.

(b) Disputes of Lost Output.

If SCE disputes Seller's Lost Output calculation, it shall provide Notice to Seller within thirty (30) days after receipt of Seller's Lost Output Report and

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include SCE's calculations and other data supporting its position.

The Parties shall negotiate in good faith to resolve any dispute.

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

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

(c) Energy Replacement Damage Amount Calculation.

The Lost Output amount that shall be used in the Energy Replacement Damage Amount calculation, set forth in Exhibit F, shall be the amount calculated after the twelfth (12th) month of the Term Year.

*** End of ARTICLE THREE ***

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

ARTICLE FOUR. SCE'S OBLIGATIONS**4.01 Obligation to Pay.**

For Seller's *full* compensation under this Agreement, SCE shall make monthly Energy Payments to Seller during the Term calculated in the manner described in Section 4.02.

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 gross negligence by SCE, including, without limitation:

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

4.02 Payments and Adjustments.**(a) Energy Payment Calculations.**

For the purpose of calculating monthly Energy Payments, Scheduled Amounts shall be time-differentiated according to the time period and season of delivery ("TOD Periods") and the pricing shall be weighted by the Energy Payment Allocation Factors set forth in Exhibit K.

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

Monthly Energy Payments shall equal the sum of the monthly TOD Period Energy Payments for all TOD Periods in the month. Each monthly TOD Period Energy Payment shall be calculated pursuant to the following formula, where "n" is the TOD Period being calculated:

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

Where:

- A = Energy Price for the applicable Term Year specified in Section 1.05 in \$/kWh (i.e., \$/MWh/1000).
- B = Energy Payment Allocation Factor, set forth in Exhibit K, for the TOD Period being calculated.
- C = The sum of Scheduled Amounts in all hours for the TOD Period being calculated in kWh.

(b) Payment Adjustments.

If, in any Settlement Interval, the Scheduled Amount deviates from the Generating Facility's Delivered Amount by more than plus or minus three percent ($\pm 3\%$) of the Delivered Amount, *then* Seller's monthly Energy Payment may be subject to an adjustment calculated by SCE in accordance with the procedures set forth in Exhibit E.

Such payment adjustments shall *not* apply so long as Seller is Scheduling through an independent third party approved by SCE who utilizes forecasting and Scheduling methodologies acceptable to SCE in its sole discretion.

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 in which the payment statement is being sent is February), or the last Business Day of the month if such 30th day (or 28th or 29th day for February) is a weekend day or holiday, do each of the following:
 - (i) Send a statement to Seller showing:
 - (1) The Scheduled Amounts for each TOD Period during the month for which the payment is being made;
 - (2) A calculation of the amount payable to Seller for the month pursuant to Section 4.02(a);
 - (3) A calculation of any payment adjustments pursuant to Section 4.02(b); and

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- (4) A calculation of the net amount due Seller.
- (ii) Send to Seller, via wire transfer, SCE's payment of said net amount, plus a Simple Interest Payment calculated using the Interest Rate and the number of days that the payment is late.
- (b) In the event SCE determines that a calculation of Metered Amounts for any purpose hereunder is incorrect as a result of inaccurate meters, SCE shall promptly recompute Metered Amounts for the period of the inaccuracy.

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 payment statement that is calculated after SCE's recomputation using corrected measurements.

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

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

Adjustment payments for meter inaccuracy shall not bear interest.

- (c) SCE reserves the right to apply amounts that would otherwise be due to Seller under this Agreement as an offset in payment of:
 - (i) Any amounts owing and unpaid by Seller to SCE under this Agreement; or
 - (ii) Any amount owed to SCE by Seller arising out of, or related to, any other SCE agreement, tariff, obligation or liability.

Nothing in this Section 4.03 shall limit SCE's rights under applicable tariffs, other agreements or Applicable Law.

- (d) Except as provided in Section 4.03(b) and as otherwise provided in this Section 4.03(d), if within forty five (45) days after receipt of SCE's payment statement, Seller does not give Notice to SCE of an error, *then* Seller shall be deemed to have waived any error in SCE's statement, computation and payment, and the statement shall be conclusively deemed correct and complete;

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

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

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

Late payments to Seller resulting from SCE's errors, or overpayments to Seller by SCE, shall include a Simple Interest Payment calculated using the Interest Rate and the number of days between 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) and the date paid;

provided, however, that changes made because of settlement, audit or other information, 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 offsetting any amounts owed to Seller, the next monthly payment statement shall show a net amount owing to SCE.

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

The Parties shall negotiate in good faith to resolve any disputes regarding claimed errors in a payment statement.

Any disputes which the Parties are unable to resolve through negotiation may be submitted for resolution through mediation and arbitration as provided in Article Twelve.

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4.04 Cooperation with Seller and Scheduling.

SCE, at its own cost and expense, shall cooperate reasonably with Seller to permit Seller to effectuate its Scheduling obligations hereunder and to take delivery of Seller's Scheduled Amounts.

4.05 SCE Meter Maintenance.

- (a) The SCE Meter shall be tested by SCE, at SCE's expense, at least once each year.
- (b) SCE shall provide Seller reasonable notice of testing and have the right to have a representative present on such occasions.

4.06 Interest Payments on Cash Deposits.

- (a) SCE shall make monthly Simple Interest Payments, calculated using the Federal Funds Effective Rate, to Seller on cash amounts posted for the:
 - (i) Agreement Deposit; and
 - (ii) Performance Assurance.
- (b) Upon receipt of a monthly invoice (provided by Seller to the SCE Manager of Credit and Collateral designated in Exhibit C) that sets forth the calculation of the Simple Interest Payment amount due, SCE shall make payment thereof by the later of the third Local Business Day:
 - (i) Of the first month after the last month to which the invoice relates; and
 - (ii) After the day on which such invoice is receivedprovided that,
 - (iii) No Event of Default has occurred and is continuing with respect to Seller; and
 - (iv) No Early Termination Date for which any unsatisfied payment obligation of Seller exists, has occurred or has been designated as the result of an Event of Default by Seller.
- (c) On or after the occurrence of an Event of Default by Seller or an Early Termination Date as a result of an Event of Default by Seller, SCE shall retain any such Simple Interest Payment amount as an additional Agreement Deposit amount or a Performance Assurance amount hereunder until the obligations of

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

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

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ARTICLE FIVE. FORCE MAJEURE

5.01 No Default for Force Majeure.

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

5.02 Requirements Applicable to the Claiming Party.

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

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

- (a) The Claiming Party, within fourteen (14) days after the initial occurrence of the claimed Force Majeure, must give the other Party Notice describing the particulars of the occurrence; and
- (b) The Claiming Party must provide timely evidence reasonably sufficient to establish that the occurrence constitutes Force Majeure as defined in this Agreement.

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

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

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

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

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

5.03 Startup Deadline Extension.

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

5.04 Firm 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 Contract Capacity as provided in Sections 3.04(c) or 3.04(d), *then* the Firm Operation Date shall, subject to Seller's compliance with its obligations as the Claiming Party under Section 5.02, be extended on a day-for-day basis for the duration of the Force Majeure.

5.05 Termination.

Either Party may terminate this Agreement on Notice, which shall be effective five (5) Business Days after such Notice is provided, in the event of Force Majeure which extends for more than three hundred sixty five (365) consecutive days.

*** 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) With respect to either Party:
 - (i) Any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made or repeated if the representation or warranty is continuing in nature, if:
 - (1) Such misrepresentation or breach of warranty is not remedied within five (5) Business Days after Notice; or
 - (2) 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;
 - (ii) 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 (or such shorter period as may be specified below), which Notice sets forth in reasonable detail the nature of the failure; *provided that*, if such failure is not reasonably capable of being cured within the thirty (30) day cure period specified above, the Party shall have such additional time (not exceeding an additional one hundred twenty (120) days) as is reasonably necessary to cure such failure, so long as such Party promptly commences and diligently pursues such cure;
 - (iii) A Party fails to make when due any payment (other than amounts disputed in good faith in accordance with the terms of this Agreement) due and owing under this Agreement and such failure is not cured within five (5) Business Days after Notice of such failure;
 - (iv) The failure of such Party to satisfy the creditworthiness and collateral requirements in Article Eight and such failure is not cured within three (3) Business Days after Notice of such failure;
 - (v) A Party becomes Bankrupt; or

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- (vi) A 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;

- (b) 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 if the representation or warranty is continuing in nature and the misrepresentation or breach of warranty is not remedied within five (5) Business Days after Notice;

 - (ii) The failure of a Guarantor to make any payment required or to perform any other material covenant or obligation in any guaranty made in connection with this Agreement and such failure shall not be remedied within three (3) Business Days after Notice;

 - (iii) A Guarantor becomes Bankrupt;

 - (iv) The failure of a Guarantor's Guaranty Agreement to SCE to be in full force and effect for purposes of this Agreement (other than in accordance with its terms);

 - (v) A Guarantor repudiates, disaffirms, disclaims, or rejects, in whole or in part, or challenges the validity of any Guaranty Agreement given to SCE;

 - (vi) The occurrence and continuation of a default, event of default or other similar condition or event under one or more agreements or instruments, individually or collectively, relating to indebtedness for borrowed money in the aggregate amount of not less than the Cross Default Amount, which results in such indebtedness becoming, or becoming capable at such time of being declared, immediately due and payable; or

 - (vii) The occurrence and continuation of a default in making on the due date therefore one or more payments, individually or collectively, in an aggregate amount of *not less than* the applicable Cross Default Amount.

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- (c) With respect to Seller:
- (i) Seller fails to post and maintain the Agreement Deposit, pursuant to Section 3.04(a); and such failure is not cured within five (5) Business Days after Notice of such failure;
 - (ii) Seller does not own the Generating Facility or otherwise have the authority over the Generating Facility as required in Section 3.07(a);
 - (iii) Seller has not cured a failure with respect to Section 3.07(a) within the earlier of thirty (30) days after providing Notice in accordance with Section 3.07(b) or sixty (60) days after the occurrence of the event which results in such failure;
 - (iv) The sum of Metered Amounts plus Lost Output in any consecutive six (6) month period are not at least 10 percent (10%) of the Expected Annual Net Energy Production set forth in Section 1.01(e), and Seller fails to demonstrate to SCE's reasonable satisfaction, within ten (10) Business Days after Notice from SCE, a legitimate reason for such failure;
 - (v) The Metered Amounts in any one hour interval, in kWh/hr, exceed one hundred fifteen percent (115%) of the Contract Capacity set forth in Section 1.01(d) to this Agreement, (an "Event of Excess Deliveries"), without the prior written consent of SCE, and within ten (10) Business Days after Notice, Seller fails to demonstrate to SCE's satisfaction that it has identified the reason that the Event of Excess Deliveries occurred and that it has or is employing diligent good faith efforts to ensure that no additional Events of Excess Deliveries will occur during the Term;
 - (vi) Seller or Seller's Scheduling Coordinator 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 hour as permitted by and subject to the ISO Tariff;
 - (vii) Seller removes from the Site equipment upon which the Contract Capacity has been based, except for the purposes of replacement, refurbishment, repair or maintenance, and such equipment is not returned within five (5) Business Days after Notice from SCE;

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- (viii) The Generating Facility consists of an ERR type(s) different than that specified in Section 1.01(c);
- (ix) The Generating Facility fails to qualify as an ERR;
- (x) Any electric energy from the Generating Facility and sold or to be sold to SCE hereunder fails to qualify as output from an ERR;
- (xi) Seller fails to take any actions necessary to dedicate, convey or effectuate the use of any and all Environmental Attributes, Capacity Attributes and Resource Adequacy Benefits for SCE's sole benefit as specified in Section 3.01;
- (xii) Seller fails to achieve 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;
- (xiii) A termination of, or cessation of service under, any agreement necessary for the interconnection of the Generating Facility to the Transmission Provider's electric system or transmission of the electric energy to the Delivery Point, for Scheduling to SCE, or for metering the Metered Amounts and such service is not reinstated, or alternative arrangements implemented, within one hundred and twenty (120) days after such termination or cessation except to the extent such cessation or termination is deemed a Force Majeure;
- (xiv) Seller defaults under any Security Document and such default is not cured within the applicable cure period, if any, set forth in such Security Document, or Seller repudiates, disaffirms, disclaims, or rejects, in whole or in part, or challenges the validity of, any of the Security Documents;
- (xv) The occurrence and continuation of a default, event of default or other similar condition or event under one or more agreements or instruments, individually or collectively, relating to indebtedness for borrowed money in the aggregate amount of not less than the Cross Default Amount, which results in such indebtedness becoming, or becoming capable at such time of being declared, immediately due and payable;
- (xvi) The occurrence and continuation of a default in making on the due date therefore one or more payments, individually or collectively, in an aggregate amount of not less than the applicable Cross Default Amount; or

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- (xvii) The stock or equity ownership interest in Seller has been pledged or assigned as collateral or otherwise to any party other than Lender.

6.02 Early Termination.

If an Event of Default shall have occurred, 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 this 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, 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 including the Forward Settlement Amount, together with appropriate supporting documentation.

If the Termination Payment is positive, the Defaulting Party shall pay such amount to the Non-Defaulting Party within ten (10) Business Days after the Notice is provided. If the Termination Payment is negative (i.e., the Non-Defaulting Party owes the Defaulting Party more than the Defaulting Party owes the Non-Defaulting Party), *then* the Non-Defaulting Party shall pay such amount to the Defaulting Party within thirty (30) days after the Notice is provided.

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 may be submitted for resolution through mediation and arbitration as provided in Article Twelve.

*** End of ARTICLE SIX ***

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

ARTICLE SEVEN. LIMITATIONS OF LIABILITIES

EXCEPT AS SET FORTH HEREIN, THERE ARE NO WARRANTIES BY EITHER PARTY UNDER THIS AGREEMENT, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF.

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

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

UNLESS EXPRESSLY PROVIDED IN THIS AGREEMENT, INCLUDING WITHOUT LIMITATION THE PROVISIONS OF SECTION 10.03 (INDEMNITY), NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE.

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

TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

NOTHING IN THIS SECTION PREVENTS, OR IS INTENDED TO PREVENT SCE FROM PROCEEDING AGAINST OR EXERCISING ITS RIGHTS WITH RESPECT TO ANY SECURED INTERESTS IN COLLATERAL.

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NOTWITHSTANDING ANYTHING TO THE CONTRARY SET FORTH HEREIN, THE VALUE, IF ANY, OF ANY PRODUCTION TAX CREDITS, DETERMINED ON AN AFTER-TAX BASIS, LOST DUE TO SCE'S DEFAULT, SHALL BE DEEMED DIRECT TO THE EXTENT LOST PRODUCTION TAX CREDITS ARE RECOVERABLE UNDER THIS AGREEMENT.

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

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

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.

In all cases the statements shall be for the most recent accounting period and prepared in accordance with generally accepted accounting principles; *provided that*, should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as the producing party diligently pursues the preparation, certification and delivery of the statements.

8.02 Seller's Collateral Requirement.

- (a) During the Term of this Agreement, on any Calculation Date, but no more than once a week, Seller shall post Performance Assurance in the amount of Seller's Collateral Requirement which shall be calculated as set forth in Section 8.02(b) below.

- (i) If Seller's Collateral Requirement is greater than any Performance Assurance already provided to SCE by Seller, then upon Notice by SCE, Seller shall provide to SCE additional Performance Assurance within three (3) Local Business Days to cover Seller's Collateral Requirement, so long as, with respect to SCE:

- (1) No Event of Default has occurred or is continuing; and
- (2) No Early Termination Date has occurred or been designated as a result of an Event of Default for which there exist any unsatisfied payment obligation.

The amount of additional Performance Assurance to be provided by Seller to SCE shall be rounded up to the nearest \$250,000.

- (ii) If Seller's Collateral Requirement is less than any Performance Assurance already provided to SCE by Seller, then within three (3) Local Business Days of Seller's Notice to SCE, SCE shall return, or

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effectuate the return, to Seller any Performance Assurance in excess of the Collateral Requirement, so long as, with respect to Seller:

- (1) No Event of Default has occurred or is continuing; and
- (2) No Early Termination Date has occurred or been designated as a result of an Event of Default for which there exist any unsatisfied payment obligation.

The amount of additional Performance Assurance to be provided by Seller to SCE shall be rounded down to the nearest \$250,000.

- (b) Seller's Collateral Requirement on any Calculation Date shall be the amount equal to (X) less (Y), but no less than zero, where:

(X) = The positive amount of the Mark-to-Market Value as determined pursuant to Exhibit O plus amounts owed or otherwise accrued and payable (regardless of whether such amounts have been or could be invoiced) to SCE and that remain unpaid as of the Calculation Date, less amounts owed or otherwise accrued and payable (regardless of whether such amounts have been or could be invoiced) to Seller and that remain unpaid as of such Calculation Date.

(Y) = Seller's Collateral Threshold as set forth in Section 1.06.

8.03 Performance Assurance.

(a) Interest Payments on Cash.

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

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

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

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

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On or after the occurrence of an Event of Default by Seller or an Early Termination Date as a result of an Event of Default by Seller, SCE shall retain any such interest amount as additional Performance Assurance hereunder until the obligations of the Seller under this Agreement have been satisfied in the case of an Early Termination Date or for so long as such Event of Default is continuing in the case of an Event of Default.

(b) Letters of Credit.

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

- (i) Each Letter of Credit shall be maintained for the benefit of SCE.
- (ii) 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 the bank issuing a Letter of Credit fails to honor SCE's properly documented request to draw on an outstanding Letter of Credit, provide alternative Performance Assurance acceptable to SCE within one (1) Business Day after such refusal;
- (iii) Upon the occurrence of a Letter of Credit Default, Seller shall provide to SCE either a substitute Letter of Credit or alternative Performance Assurance acceptable to SCE, in each case on or before the first Business Day after the occurrence thereof (or the fifth (5th) Business Day after the occurrence thereof if only Section a) in the definition of "Letter of Credit Default" in Exhibit A applies);
- (iv) Upon, or at any time after, the occurrence and continuation of an Event of Default by Seller, or if an Early Termination Date has occurred or been designated as a result of an Event of Default by Seller for which there exist any unsatisfied payment obligations, *then* SCE may draw on any undrawn portion of any outstanding Letter of Credit upon

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

Cash proceeds received by SCE from drawing upon the Letter of Credit shall be deemed Performance Assurance as security for the Seller's obligations to SCE and SCE shall have the rights and remedies set forth in Section 8.04 with respect to such cash proceeds.

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

- (1) Failure to provide sufficient Performance Assurance; or
 - (2) Any amounts owing to SCE and remaining unpaid after the application of the amounts so drawn by SCE.
- (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) Guaranty Agreement.

If Seller's Performance Assurance obligation is satisfied by a Guaranty Agreement, it shall be in the form of Exhibit I executed by the Guarantor identified in Section 1.07 or other party 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.

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

To secure its obligations under this Agreement, and until released as provided herein, Seller hereby grants to SCE a present and continuing first-priority security interest ("Security Interest") in, and lien on (and right of setoff against), and assignment of, the Performance Assurance, all cash collateral and cash equivalent collateral and any and all proceeds resulting therefrom 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,

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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) Draw on any outstanding Letter of Credit issued for its benefit; and
- (c) Liquidate all Performance Assurance then held by or for the benefit of SCE free from any claim or right of any nature whatsoever of Seller, including any equity or right of purchase or redemption by Seller.

SCE shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce Seller's obligations under this 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.

8.05 Subordinated Security Interests and Mortgage.

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

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

The Secured Interests shall be subordinate in right of payment, priority and remedies only to the interests of Lender in accordance with the terms of the Secured Interests.

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The Secured Interests shall not include the pledge, assignment, or other interest in the ownership interest in Seller; *provided that*, it shall be an Event of Default if the ownership interest of the Seller is pledged or assigned, or caused or permitted to be pledged or assigned, as collateral or otherwise to any party other than Lender.

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

The Security Documents shall contain financial and operating covenants intended to preserve and maintain the value of the Security Interests and substantially similar to those in favor of Lender.

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

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

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

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

- (c) The Security Documents shall provide that if SCE acts to obtain title to the Generating Facility pursuant to the interests provided by Seller pursuant to Section 8.05(a), Seller shall take all steps necessary to transfer all permits and licenses necessary to Operate the Generating Facility to SCE, and shall diligently prosecute and cooperate in such transfers.

8.06 Credit and Collateral Covenants.

- (a) Seller shall, from time to time as requested by SCE, execute, acknowledge, record, register, deliver and file all such notices, statements, instruments and

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other documents as may be necessary or advisable to render fully valid and enforceable under all applicable laws the Security Documents and the rights, liens and priorities of SCE with respect to the Security Interest and the Secured Interests provided for herein and therein;

- (b) Seller shall not cause or permit the stock or equity ownership interest in Seller to be pledged or assigned as collateral or otherwise to any party other than Lender;
- (c) Seller shall not create, incur, issue, assume, guarantee or otherwise become directly or indirectly liable for, contingently or otherwise, any Seller's Debt, or issue any Disqualified Stock, in each case, other than Seller's Debt incurred, issued, assumed or guaranteed, or Disqualified Stock issued, in connection with the funding of the development, construction or operation of the Generating Facility;
- (d) Except for liens permitted under the Security Documents and liens for the benefit of Lender, Seller shall not create, incur, assume or suffer to be created by it or any subcontractor, employee, laborer, materialman, other supplier of goods or services or any other person, any lien on Seller's interest (or any part thereof) in this Agreement, the Site or the Generating Facility. Seller promptly shall pay or discharge, or shall cause its contractors to promptly pay and discharge, and discharge of record, any such lien for labor, materials, supplies or other obligations upon Seller's interest in the Site, the Generating Facility, or any part thereof or interest therein, unless Seller is disputing any such lien in good faith and only for so long as it does not create an imminent risk of a sale or transfer of the Generating Facility or a material part thereof. Seller shall promptly notify SCE of any attachment or imposition of any lien against Seller's interest in the Site, the Generating Facility, or any part thereof or interest therein;
- (e) Seller shall not permit Seller's Debt to Equity Ratio to exceed the amount set forth in Section 1.08 in the applicable Term Year;
- (f) Seller shall not hold any material assets, become liable for any material obligations or engage in any material business activities other than the development, construction and Operation of the Generating Facility;
- (g) Seller shall not own, form or acquire, or otherwise conduct any of its activities through, any direct or indirect subsidiary; and

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- (h) During any period during which a Seller is a Defaulting Party, Seller shall:
 - (i) Not declare or pay any dividend, or make any other distribution or payment, on account of any equity interest in Seller; or
 - (ii) Otherwise make any distribution or payment to any Affiliate of Seller.

8.07 Waivers.

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

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

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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.

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.

***** End of ARTICLE NINE *****

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

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

- (a) It is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation;
- (b) Except for CPUC Approval in the case of SCE, it has all regulatory authorizations necessary for it to legally perform its obligations under this Agreement;
- (c) The execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or the like applicable to it;
- (d) This Agreement constitutes a legally valid and binding obligation enforceable against it in accordance with its terms, subject to any Equitable Defenses;
- (e) There is not pending, or to its knowledge, threatened against it or, in the case of Seller, any of its Affiliates, any legal proceedings that could materially adversely affect its ability to perform under this 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 are 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.

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10.02 Additional Seller Representations, Warranties and Covenants.

Seller hereby represents, warrants and covenants to SCE that throughout the Term:

- (a) It will own and Operate the Generating Facility;
- (b) It will deliver to SCE the Product free and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto by any person;
- (c) It will hold the rights to all Environmental Attributes, Capacity Attributes and Resource Adequacy Benefits, which it has conveyed and has committed to convey to SCE hereunder;
- (d) The Generating Facility will qualify and be certified by the CEC as an ERR;
- (e) The electric energy produced by the Generating Facility will qualify as generation from an ERR under the requirements of the RPS Legislation;
- (f) It shall maintain and remain in compliance with the Permit(s); and
- (g) It has CEC Certification and Verification, all Permits, interconnection agreements and transmission rights necessary to Operate the Generating Facility and to deliver electric energy from the Generating Facility to the Delivery Point.

10.03 Indemnity.

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

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

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

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- (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), 10.03(f) and 10.03(g) neither Party shall be liable to the other Party for consequential damages incurred by such other Party.
- (e) Notwithstanding anything to the contrary in this Agreement, if Seller fails to comply with the provisions of Section 10.11, Seller shall, at its own cost, defend, 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 10.11.

The inclusion of this Section 10.03(e) is not intended to create any express or implied right in Seller to elect not to provide the insurance required under Section 10.11.
- (f) Each Party shall indemnify, defend and hold harmless the other Party against any Governmental Charges for which such Party is responsible under Article Nine.
- (g) Seller shall defend, hold harmless and indemnify SCE against any penalty imposed upon SCE as a result of Seller's failure to fulfill its obligations regarding Resource Adequacy Benefits as set forth under Section 3.01.
- (h) All indemnity rights shall survive the termination of this Agreement for twelve (12) months.

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

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10.04 Assignment.

- (a) Except as provided in Section 10.05, neither Party shall assign this Agreement or its rights hereunder without the prior written consent of the other Party, which consent shall not be unreasonably withheld.
- (b) Any direct or indirect change of control of Seller (whether voluntary or by operation of law) shall be deemed an assignment and shall require the prior written consent of SCE, which consent shall not be unreasonably withheld.

10.05 Consent to Collateral Assignment.

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

In connection with any financing or refinancing of the Generating Facility by Seller, SCE 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 be in form and substance agreed to by SCE, Seller and Lender, and shall include, among others, the following provisions:

- (a) SCE shall give Notice of an Event of Default by Seller, to the person(s) to be specified by Lender in the Collateral Assignment Agreement, prior to exercising its right to terminate this Agreement as a result of such Event of Default;
- (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.

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

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

provided that, Lender shall have no personal liability for any monetary obligations of Seller under this Agreement which are due and owing to SCE as of the assumption date; *provided, however*, that prior to such assumption, if SCE advises Lender that SCE will require that Lender cure (or cause to be cured) any Event of Default existing as of the possession date in order to avoid the exercise by SCE (in its sole discretion) of SCE's right to terminate this Agreement with respect to such Event of Default, *then* Lender at its option; and in its sole discretion, may elect to either:

- (i) Cause such Event of Default to be cured, or
 - (ii) Not assume this Agreement.
- (g) If Lender elects to sell or transfer the Generating Facility (after Lender directly or indirectly, takes possession of, or title to the Generating Facility), or sale of the Generating Facility occurs through the actions of Lender (for example, a foreclosure sale where a third party is the buyer, or otherwise), *then* Lender must cause the transferee or buyer to assume all of Seller's

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obligations arising under this Agreement and all related agreements as a condition of the sale or transfer.

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

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

Notwithstanding the foregoing, SCE shall not be required to enter into such agreement with Lender or such designee if there has been a change in circumstances resulting from actions of Seller in its Bankruptcy case that would, in SCE's judgment, materially impact the rights or obligations of SCE under such an agreement.

10.06 Abandonment.

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

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

10.07 Governing Law.

THIS AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED, ENFORCED AND PERFORMED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW. EACH PARTY WAIVES ITS RESPECTIVE RIGHT TO ANY JURY TRIAL WITH RESPECT TO ANY LITIGATION ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT.

10.08 Notices.

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

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

Notice provided in accordance with this Section 10.08 shall be deemed given as follows:

- (a) Notice by facsimile or hand delivery shall be deemed given at the close of business on the day actually received, if received during business hours on a Business Day, and otherwise shall be deemed given at the close of business on the next Business Day;
- (b) Notice by overnight mail or courier service shall be deemed given on the next Business Day after it was sent out; and
- (c) Notice by first class United States mail shall be deemed given two (2) Business Days after the postmarked date.

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

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

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

10.09 General.

- (a) This Agreement constitutes the entire agreement between the Parties relating to its subject matter.
- (b) This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof.
- (c) Except to the extent provided for herein, no amendment or modification to this Agreement shall be enforceable unless reduced to a writing signed by all Parties.
- (d) This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement).

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- (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 shall be considered as 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) SCE has assigned a “QFID” number to this Agreement for tracking purposes only and is not requiring that the Generating Facility be a “qualifying facility” under state or federal law.
- (n) SCE’s obligation to take and pay for electric energy produced by the Generating Facility together with Environmental Attributes and Capacity Attributes associated therewith, shall not be affected by any change to or elimination of this RPS Legislation.
- (o) The Parties acknowledge and agree that this Agreement and the transactions contemplated by this Agreement constitute a “forward contract” within the meaning of the United States Bankruptcy Code and that SCE and Seller are each “forward contract merchants” within the meaning of the United States Bankruptcy Code.

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

10.10 Confidentiality.**(a) Terms and Conditions of this Agreement.**

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

- (i) To such Party's employees, lenders, counsel, accountants or advisors who have a need to know such information and have agreed to keep such terms confidential;
- (ii) To SCE's Procurement Review Group, as defined in CPUC Decision 02-08-071, subject to any confidentiality agreements or laws, regulations or regulatory decisions concerning confidentiality which are applicable to SCE's Procurement Review Group;
- (iii) To the CPUC under seal for purposes of review subject to the disclosing Party ("Disclosing Party") making reasonable efforts to obtain confidentiality protection from the CPUC under Section 583 of the California Public Utilities Code or other statute, order or rule offering comparable confidentiality protection;
- (iv) To the ISO in order to participate in any auction, market or other process pertaining to the allocation of priorities or rights related to the transmission of electric energy sold or to be sold to SCE hereunder;
- (v) In order to comply with any Applicable Law or any exchange, control area or ISO rule, or order issued by a court or entity with competent jurisdiction over the disclosing Party ("Disclosing Party"), other than to those entities set forth in Section 10.10(a)(vi);
- (vi) In order to comply with any applicable regulation, rule, or order of the CPUC, CEC, FERC, any court, administrative agency, legislative body or other tribunal, or any discovery or data request of a party to any proceeding pending before any of the foregoing;
- (vii) As may reasonably be required to participate in any auction, market or other process pertaining to the allocation of priorities or rights related to the transmission of electrical energy sold or to be sold to SCE hereunder;
- (viii) To representatives of a Party's credit ratings agencies:

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- (1) Who have a need to review the terms and conditions of this Agreement for the purpose of assisting the Party in evaluating this Agreement for credit rating purposes; or
 - (2) With respect to the potential impact of this Agreement on the Party's financial reporting obligations.
- (ix) Disclosure of terms specified in and pursuant to Section 10.10(c);
- (x) In connection with discovery requests or orders pertaining to the non-public terms of this Agreement as referenced in Section 10.10(a)(v) ("Disclosure Order") each Party shall, to the extent practicable, use reasonable efforts to:
- (1) Notify the other Party prior to disclosing the confidential information; and
 - (2) Prevent or limit such disclosure.

After using such reasonable efforts, the Disclosing Party shall not be:

- (3) Prohibited from complying with a Disclosure Order; or
- (4) Liable to the other Party for monetary or other damages incurred in connection with the disclosure of the confidential information.

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

(b) Non-Disclosure Agreement.

- (i) The Non-Disclosure Agreement between the Parties attached hereto as Exhibit J is incorporated herein including all its amendments, modifications and supplements (the "NDA"), and the termination date of that agreement is modified such that it will terminate on the later of:
 - (1) The termination of that Agreement; or
 - (2) One year after the date of termination of this Agreement.

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

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

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

(c) RPS Confidentiality.

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

- (i) Party names;
- (ii) ERR type;
- (iii) Term;
- (iv) Generating Facility location;
- (v) Delivery Point;
- (vi) Initial Operation; and
- (vii) Contract Capacity.

10.11 Insurance.

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

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.

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- (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; and
 - (ii) Furnish to SCE an additional insured endorsement with respect to such insurance in substantially the following form:

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

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

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

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

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

10.12 Nondedication.

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

10.13 Mobile Sierra.

Notwithstanding any provision of this Agreement, neither Party shall seek, nor shall they support any third party in seeking, to prospectively or retroactively revise the rates, terms 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

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Federal Power Act, or any other provisions of the Federal Power Act, absent prior written agreement of the Parties.

Further, absent the prior agreement in writing by both Parties, the standard of review for changes to the rates, terms or conditions of 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).

10.14 Simple Interest Payments.

Except as specifically provided in this Agreement, any outstanding and past due amounts owing and unpaid by either Party under the terms of this Agreement, shall be eligible to receive a Simple Interest Payment calculated using the Interest Rate and the number of days between the date due and the date paid.

10.15 Payments.

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

*** *End of ARTICLE TEN* ***

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ARTICLE ELEVEN. CHANGE IN ELECTRIC MARKET DESIGN

If a Change in ISO Tariff renders this Agreement or any terms herein incapable of being performed or administered, *then* either Party, on Notice, may request the other Party to enter into good faith negotiations to make the minimum changes to this Agreement necessary to make this Agreement capable of being performed and administered, while attempting to preserve to the maximum extent possible the benefits, burdens and obligations set forth in this 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 after the sending of the Notice requesting negotiations, either to agree upon changes to this Agreement or to resolve issues relating to changes to this Agreement, *then* either Party may submit issues pertaining to changes to this Agreement to mediation and arbitration as provided in Article Twelve.

A change in cost shall not in itself be deemed to render this Agreement or any terms therein incapable of being performed or administered.

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

ARTICLE TWELVE. MEDIATION AND ARBITRATION**12.01 Dispute Resolution.**

Any and all disputes, claims or controversies arising out of, relating to, concerning or pertaining to the terms of this Agreement, or to either Party's performance or failure of performance under this Agreement ("Dispute"), which Dispute the Parties have been unable to resolve by informal methods after undertaking a good faith effort to do so, shall first be submitted to mediation under the procedures described in Section 12.02 below, and if the matter is not resolved through mediation, then for final and binding arbitration under the procedures described in Section 12.03 below.

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

12.02 Mediation.

Either Party may initiate mediation by providing Notice to the other Party in accordance with Section 10.08 of a written request for mediation, setting forth a description of the Dispute and the relief requested. The Parties will cooperate with one another in selecting the mediator ("Mediator") from the panel of neutrals from Judicial Arbitration and Mediation Services, Inc. ("JAMS"), its successor, or any other mutually acceptable non-JAMS Mediator, and in scheduling the time and place of the mediation. Such selection and scheduling shall be completed within forty five (45) days after Notice of the request for mediation. Unless otherwise agreed to by the Parties, the mediation shall not be scheduled for a date that is greater than one hundred twenty (120) days from the date of Notice of the request for mediation. The Parties covenant that they will participate in the mediation in good faith, and that they will share equally in its costs (other than each Party's individual attorneys' fees and costs related to the Party's participation in the mediation, which fees and costs shall be borne by such Party). All offers, promises, conduct and statements, whether oral or written, made in connection with or during the mediation by either of the Parties, their agents, representatives, employees, experts and attorneys, and by the Mediator or any of the Mediator's agents, representatives and employees, shall not be subject to discovery and shall be confidential, privileged and inadmissible for any purpose, including impeachment, in any arbitration or other proceeding between or involving the Parties, or either of them, provided that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the mediation.

12.03 Arbitration.

Either Party may initiate binding arbitration with respect to the matters first submitted to mediation by providing Notice in accordance with Section 10.08 of a demand for

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binding arbitration before a single, neutral arbitrator (the "Arbitrator") at any time following the unsuccessful conclusion of the mediation provided for above.

The Parties will cooperate with one another in selecting the Arbitrator within sixty (60) days after Notice of the demand for arbitration and shall further cooperate in scheduling the arbitration to commence no later than one hundred eighty (180) days from the date of Notice of the demand. 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. To be qualified as an Arbitrator, each candidate must be a retired judge of a trial court of any state or federal court, or retired justice of any appellate or supreme court. Unless otherwise agreed to by the Parties, the individual acting as the Mediator shall be disqualified from serving as the Arbitrator in the dispute, although the Arbitrator may be another member of the JAMS panel of neutrals or such other panel of neutrals from which the Parties have agreed to select the Mediator.

Upon Notice of a Party's demand for binding arbitration, such Dispute submitted to arbitration, including the determination of the scope or applicability of this agreement to arbitrate, shall be determined by binding arbitration before the Arbitrator, in accordance with the laws of the State of California, without regard to principles of conflicts of laws. Except as provided for herein, the arbitration shall be conducted by the Arbitrator in accordance with the rules and procedures for arbitration of complex business disputes for the organization with which the Arbitrator is associated; absent the existence of such rules and procedures, the arbitration shall be conducted in accordance with the California Arbitration Act, California Code of Civil Procedure Section 1280 *et seq.* and California procedural law (including the Code of Civil Procedure, Civil Code, Evidence Code and Rules of Court, but excluding local rules).

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.

Also notwithstanding the rules and procedures that would otherwise apply to the arbitration, and unless the Parties agree to a different arrangement, discovery will be limited as follows:

- (a) Before discovery commences, the Parties shall exchange an initial disclosure of all documents and percipient witnesses which they intend to rely upon or use at any arbitration proceeding (except for documents and witnesses to be used solely for impeachment);
- (b) The initial disclosure shall occur within thirty (30) days after the initial conference with the Arbitrator or at such time as the Arbitrator may order;

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- (c) Discovery may commence at any time after the Parties' initial disclosure;
- (d) The Parties will not be permitted to propound any interrogatories or requests for admissions;
- (e) Discovery shall be limited to twenty five (25) document requests (with no subparts), three (3) lay witness depositions, and three (3) expert witness depositions (unless the Arbitrator holds otherwise following a showing by the Party seeking the additional documents or depositions that the documents or depositions are critical for a fair resolution of the Dispute or that a Party has improperly withheld documents);
- (f) Each Party is allowed a maximum of three (3) expert witnesses, excluding rebuttal experts;
- (g) Within sixty (60) days after the initial disclosure, or at such other time as the Arbitrator may order, the Parties shall exchange a list of all experts upon which they intend to rely at the arbitration proceeding;
- (h) Within thirty (30) days after the initial expert disclosure, the Parties may designate a maximum of two (2) rebuttal experts;
- (i) Unless the Parties agree otherwise, all direct testimony shall be in form of affidavits or declarations under penalty of perjury; and
- (j) Each Party shall make 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 and any expert witnesses, 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.

12.04 Arbitration Prior to Release of Deed of Trust.

The rights granted pursuant to this Article Twelve shall become effective only upon such time as any deed of trust made by Seller in favor of SCE has been released, fully reconveyed, or extinguished. No controversy or claim shall be submitted to mediation and arbitration in accordance with this Article Twelve if, at the time of the proposed submission, such controversy or claim arises from or relates to an obligation to SCE that is secured by real property collateral.

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12.05 Waivers.

SELLER AGREES THAT SELLER WILL NOT AT ANY TIME INSIST UPON, PLEAD, CLAIM OR TAKE THE BENEFIT OR ADVANTAGE OF ANY LAW NOW OR HEREAFTER IN FORCE REQUIRING FORECLOSURE OF ANY RIGHTS GRANTED TO SCE BY SELLER UNDER ANY DEED OF TRUST BEFORE TAKING ANY ACTION DESCRIBED IN SECTIONS 12.02 AND 12.03 HEREOF.

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

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

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

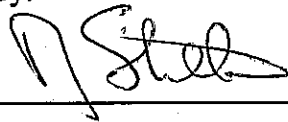
**IMPERIAL VALLEY RESOURCE
RECOVERY COMPANY, L.L.C.**

**SOUTHERN CALIFORNIA EDISON
COMPANY,**

a Delaware limited liability company

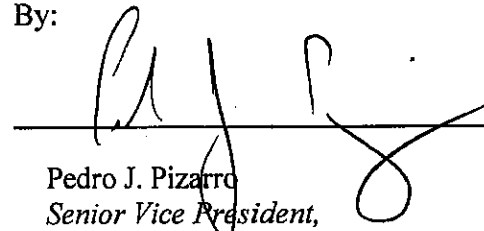
a California corporation.

By:



Roger Silverthorn
President

By:



Pedro J. Pizarro
*Senior Vice President,
Power Procurement*

Date: 11-2-2006

Date: Nov. 15, 2006

APPROVED
STEPHEN E. PICKETT
Sr. Vice President and
General Counsel
By J Eric Isken
Nov 14, 2006 Attorney

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

EXHIBIT A

Definitions

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

EXHIBIT A*Definitions*

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

1. "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.

2. "Agreement" has the meaning set forth in the Preamble.
3. "Agreement Deposit" means the fee described in Section 3.04(a).
4. "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.
5. "Arbitrator" has the meaning set forth in Article Twelve.
6. "Authority to Construct" means an application or other appropriate request with the appropriate Air Pollution Control District for determination that construction of the Generating Facility is authorized under applicable air pollution control laws and regulations.
7. "Bankrupt" means with respect to any entity, such entity:
 - a) Files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it;
 - b) Makes an assignment or any general arrangement for the benefit of creditors;
 - c) Otherwise becomes bankrupt or insolvent (however evidenced);
 - d) Has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets; or
 - e) Is generally unable to pay its debts as they fall due.

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8. "Business Day" means any day except a Saturday, Sunday, a Federal Reserve Bank holiday, or the Friday following Thanksgiving. A Business Day shall begin at 8:00 a.m. and end at 5:00 p.m. local time for the Party sending the Notice or payment or performing a specified action.
9. "Calculation Date" means any Local Business Day on which SCE chooses or is requested by Seller to make the determinations referred to in Article Eight of this Agreement.
10. "Capacity Attributes" means any and all current or future defined characteristics, certificates, tag, credits, ancillary service attributes, or accounting constructs, howsoever entitled, including any accounting construct counted toward any resource adequacy requirements, attributed to or associated with the Generating Facility or any unit of generating capacity of the Generating Facility during the Term.
11. "CEC" means the California Energy Commission.
12. "CEC Certification and Verification" means that the CEC has certified (or, with respect to periods before the Generating Facility has been constructed, that the CEC has pre-certified) that the Generating Facility is an ERR for purposes of the RPS Legislation and that all electric energy produced by the Generating Facility qualifies as generation from an ERR for purposes of the RPS Legislation.
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.
14. "Claiming Party" has the meaning set forth in Section 5.02.
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.
16. "Collateral Assignment Agreement" has the meaning set forth in Section 10.05.
17. "Collateral Requirement" has the meaning set forth in Section 8.02.
18. "Collateral Threshold" has the meaning set forth in Section 1.06.

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19. "Contract Capacity" means the electric energy generating capacity, set forth in Section 1.01(d), that Seller commits to install at the Site and that is subject to reduction as set forth in Section 3.04(d).
20. "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.
21. "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 such Party in entering into any new arrangement which replaces this Agreement.
22. "CPUC" means the California Public Utilities Commission.
23. "CPUC Approval" means a final and non-appealable order of the CPUC, without conditions or modifications unacceptable to the Parties, or either of them, which contains the following terms:
 - a) Approves this Agreement in its entirety, including payments to be made by SCE, subject to CPUC review of SCE's administration of this Agreement;
 - b) Finds that any procurement pursuant to this Agreement is procurement from an eligible renewable energy resource for purposes of determining SCE's compliance with any obligation that it may have to procure eligible renewable energy resources pursuant to the RPS Legislation, CPUC Decision 03-06-071, or other Applicable Law; and
 - c) Finds that any procurement pursuant to this Agreement constitutes incremental procurement or procurement for baseline replenishment by SCE from an eligible renewable energy resource for purposes of determining SCE's compliance with any obligation to increase its total procurement of eligible renewable energy resources that it may have pursuant to the RPS Legislation, CPUC Decision 03-06-071, or other Applicable Law.

CPUC Approval will be deemed to have occurred on the date that a CPUC decision containing such findings becomes final and non-appealable.
24. "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,

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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.

25. "Cross Default Amount" means the dollar amount set forth in Section 1.07(c).
26. "Daily Delay Liquidated Damages" has the meaning set forth in Section 3.04(b).
27. "Defaulting Party" has the meaning set forth in Section 6.01.
28. "Delivered Amounts" means the Metered Amounts adjusted by Delivery Losses.
29. "Delivery Losses" means all electric energy losses occurring between SCE Meter and the Delivery Point and electric energy losses occurring over the ISO Grid as such losses are assigned by the ISO to the Generating Facility including if applicable, but not limited to:
 - a) If the SCE Meter is not installed on the high voltage side of the Generating Facility's substation bus bar, transformer and other electric energy losses occurring between the SCE Meter and the high voltage side of the Generating Facility's substation bus bar;
 - b) Any applicable DLF or TLF, or if no DLF is applicable, *then* electric energy losses between the high voltage side of the Generating Facility's substation bus bar and the ISO Grid; and
 - c) Electric energy losses determined by utilizing the GMM, or TMM if applicable, assigned to the Generating Facility.
30. "Delivery Point" means ISO Zone SP-15.

Notwithstanding anything to the contrary in Article Eleven, after a Change in ISO Tariff that impacts the trading points or trading rules thereof in ISO Zone SP-15, the "Delivery Point" shall be a valid Scheduling point in SP-15 that is either:

- 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.
31. "Demonstrated Contract Capacity" has the meaning set forth in Section 3.04(d).
 32. "Demonstration Hour" means the date and hour selected by Seller, on or before any applicable Firm Operation Date, during which Seller claims it has demonstrated the applicable Contract Capacity.

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33. "Disclosing Party" has the meaning set forth in Section 10.10.
34. "Disclosure Order" has the meaning set forth in Section 10.10.
35. "Dispute" has the meaning set forth in Article Twelve.
36. "Disqualified Stock" means any capital stock that, by its terms (or by the terms of any security into which it is convertible, or for which it is exchangeable, in each case at the option of the holder of the capital stock), or upon the happening of any event, matures or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise, or is redeemable at the option of the holder of the capital stock, in whole or in part, on or prior to the date that is ninety-one (91) days after the expiration of the Term of this Agreement.
37. "DLF" means a measure of all net electric energy 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.
38. "Early Termination Date" has the meaning set forth in Section 6.02.
39. "Effective Date" has the meaning set forth in the Preamble.
40. "Emergency" means:
 - a) An actual or imminent condition or situation which jeopardizes SCE Electric System Integrity or the integrity of other systems to which SCE is connected, as determined by SCE in its reasonable discretion, or any condition so defined and declared by the ISO; or
 - b) An emergency condition as defined under the interconnection agreement and any abnormal interconnection or system condition that requires automatic or immediate manual action to prevent or limit loss of SCE's load or generation supply, that could adversely affect the reliability of the SCE system or generation supply, that could adversely affect the reliability of any interconnected system, or that could otherwise pose a threat to public safety.
41. "Energy Payment" has the meaning set forth in Section 4.02(a).
42. "Energy Payment Allocation Factor" has the meaning set forth in Exhibit K.
43. "Energy Price" means the energy price set forth in Section 1.05.
44. "Energy Replacement Damage Amount" has the meaning set forth in Section 3.05(b).

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45. “Environmental Attributes” mean any and all current or future credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributed to the electric energy produced by the Generating Facility and its displacement of electric energy produced by conventional generating facilities.

Environmental Attributes include but are not limited to:

- a) Any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SO_x), nitrogen oxides (NO_x), carbon monoxide (CO) and other pollutants;
- b) Any avoided emissions of carbon dioxide (CO₂), methane (CH₄) and other greenhouse gases (GHGs) that have been determined by any applicable governmental body or association of governmental representatives, such as, but not limited to, the United Nations Intergovernmental Panel on Climate Change, to contribute to the actual or potential threat of altering the Earth’s climate by trapping heat in the atmosphere; and
- c) The reporting rights to these avoided emissions such as Green Tag Reporting Rights. Green Tag Reporting Rights are the right of a Green Tag Purchaser to report the ownership of accumulated Green Tags in compliance with federal or state law, if applicable, and to a federal or state agency or any other party at the Green Tag Purchaser’s discretion, and include without limitation those Green Tag Reporting Rights accruing under Section 1605(b) of The Energy Policy Act of 1992 and any present or future federal, state, or local law, regulation or bill, and international or foreign emissions trading program. Green Tags are accumulated on kWh basis and one Green Tag represents the Environmental Attributes associated with one (1) MWh of energy.

Environmental Attributes do *not* include:

- d) Any electric energy, capacity, reliability or other power attributes from the Generating Facility;
- e) Production Tax Credits associated with the construction or Operation of the Generating Facility and other financial incentives in the form of credits, reductions, or allowances associated with the Generating Facility that are applicable to a state or federal income taxation obligation;
- f) Fuel-related subsidies or “tipping fees” that may be paid to Seller to accept certain fuels, or local subsidies received by Seller for the destruction of particular pre-existing pollutants or the promotion of local environmental benefits; or

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- g) Emission reduction credits encumbered or used by the Generating Facility for compliance with local, state, or federal operating and air quality permits.
46. "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.
47. "ERR" means a generating facility that qualifies as an eligible renewable electric energy resource for purposes of the RPS Legislation.
48. "Event of Default" has the meaning set forth in Section 6.01.
49. "Event of Deficient Energy Deliveries" has the meaning set forth in Section 3.05(a)(ii).
50. "Event of Excess Deliveries" has the meaning set forth in Section 6.01(c)(v).
51. "Expected Annual Net Energy Production" means the Generating Facility's expected annual Metered Amounts set forth in Section 1.01(e).
52. "Extraordinary SCE Force Majeure" means a Force Majeure as to which SCE is the Claiming Party that results in SCE not accepting electric energy for more than ten (10) consecutive days during which Seller was prepared and able to Schedule at the Delivery Point.
53. "Federal Funds Effective Rate" means the annual interest rate posted opposite the caption "Federal Funds (effective)" as set forth in the weekly statistical release as H.15(519), or any successor publication, published by the Board of Governors of the Federal Reserve System.
54. "FERC" means the Federal Energy Regulatory Commission.
55. "Firm Operation Date" has the meaning set forth in Section 1.03.
56. "Force Majeure" means any occurrence that was not anticipated as of the Effective Date that:
- a) 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) Is not within the reasonable control of that Party; and
 - c) The Party has been unable to overcome by the exercise of due diligence, including, but not limited to, an act of God, flood, drought, earthquake, storm,

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fire, pestilence, lightning and other natural catastrophes, epidemic, war, riot, civil disturbance or disobedience, terrorism, sabotage, strike or labor dispute, or actions or inactions of any Governmental Authority, or curtailment or reduction in deliveries at the direction of a Transmission Provider or the ISO except as set forth below.

Force Majeure does not include:

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

57. "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(a)(iii) and 6.01(c)(i), *then* the Forward Settlement Amount shall be zero dollars (\$0).

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

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

Factors used in determining the economic benefit to a Party may include, without limitation, reference to information supplied by one or more third parties, which shall exclude Affiliates of the Non-Defaulting Party, including without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves,

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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.

60. "Generating Facility" means Seller's electric generating facility as more particularly described in Exhibit B, together with all materials, equipment systems, structures, features and improvements necessary to produce electric energy at such facility, excluding the Site, land rights and interests in land.
61. "GMM(s)" means the generation meter multipliers as determined by the ISO representing the calculation of all electric energy losses assigned to the Generating Facility associated with the transmission of electric energy delivered by the Seller over the ISO Grid, which values are, as of the Effective Date, posted by the ISO on its website. The values used in this Agreement shall 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.
62. "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.
63. "Governmental Charges" has the meaning as set forth in Section 9.02.
64. "Guarantor" has the meaning set forth in Section 1.07.
65. "Guaranty Agreement" means, if a Guarantor has been identified, the guaranty agreement from the Guarantor in the form attached hereto as Exhibit I.
66. "Initial Operation" has the meaning set forth in Section 2.03(b).

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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.
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.
69. "ISO Approved Quantity" means the electric energy quantity Scheduled by Seller's Scheduling Coordinator's and approved by the ISO in its final schedule published in accordance with the ISO Tariff.
70. "ISO Grid" means the system of transmission lines and associated facilities and entitlements of the participating transmission owners that have been placed under the ISO's operational control.
71. "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.
72. "kW" means a kilowatt of electric energy generating capacity or power output.
73. "kWh" means a kilowatt-hour of electric energy.
74. "Lease" means one or more agreements whereby Seller leases the Site(s) described in Section 1.01(b) from a third party, the term of which lease begins on or before the commencement of the Term and extends at least through the last day of the Term.
75. "Lender" means any financial institution(s) or successor(s) in interest or assignees that provide(s) development, bridge, construction, permanent debt or tax equity financing or refinancing for the Generating Facility to Seller.

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76. "Letter of Credit" means an irrevocable, nontransferable standby letter of credit provided by Seller and issued by a U.S. commercial bank or a U.S. branch of a foreign bank with such bank having a Credit Rating of at least "A-" from S&P and "A3" from Moody's, substantially in the form of Exhibit N and acceptable to SCE.
77. "Letter of Credit Default" means with respect to a Letter of Credit, the occurrence of any of the following events:
- a) The issuer of such Letter of Credit fails to maintain a Credit Rating of at least "A-" by S&P and "A3" by Moody's;
 - b) The issuer of the Letter of Credit fails to comply with or perform its obligations under such Letter of Credit;
 - c) The issuer of such Letter of Credit disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges the validity of, such Letter of Credit;
 - d) Such Letter of Credit fails or ceases to be in full force and effect at any time;
 - e) Seller fails to provide an extended or replacement Letter of Credit within twenty (20) Business Days before such Letter of Credit expires or terminates;
 - f) The issuer of such Letter of Credit becomes Bankrupt;

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

78. "Local Business Day" means, a Business Day on which commercial banks are open for business (a) in relation to any payment, in the place where the relevant account is located and (b) in relation to any notice or other communication, in the location specified in the address for notice provided by the recipient, except for the Friday immediately following the U.S. Thanksgiving holiday or a Federal Reserve Bank holiday.
79. "Losses" means, with respect to any Party, an amount equal to the net present value of the economic loss to it, if any (exclusive of Costs), resulting from termination of this Agreement for the remaining Term of this Agreement, determined in a commercially reasonable manner.

Factors used in determining economic loss to a Party may include, without limitation, reference to information supplied by one or more third parties, which shall exclude Affiliates of the Non-Defaulting Party, including without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, Market Price Referents

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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.

80. "Lost Output" means the sum of the Metered Amounts over the relevant measurement period that the Generating Facility could reasonably have been expected to produce and deliver, based upon the calculation method set forth in Exhibit M, but was not 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 the Transmission Provider; *provided that*, the basis of such curtailment or reduction is not an event caused by Seller.
81. "Lost Output Report" means the a report of Lost Output prepared in accordance with the procedures set forth in Section 3.16 and Exhibit M.
82. "Lost Output Workbook" has the meaning set forth in Exhibit M.
83. "Major Maintenance" means removing the Generating Facility from service for inspection and general overhaul of one or more major equipment groups. Such action must meet the following requirements:
- a) Be of the type that is necessary to reliably maintain the Generating Facility;
 - b) Cannot be reasonably conducted while the Generating Facility is operating; and
 - c) Causes the net output of the Generating Facility to be reduced by at least 50%.
84. "Major Maintenance Year" means any Term Year in which Seller conducts Major Maintenance of the Generating Facility.
85. "Market Price" means the ISO Real-Time Price for uninstructed deviations or any successor price for short term imbalance electric energy, as such price or successor

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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 this 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.

86. "Market Price Referent" means the market price referent applicable to this Agreement, as determined by the CPUC in accordance with Public Utilities Code Section 399.15(c).
87. "Mark-to-Market Value" has the meaning set forth in Exhibit O.
88. "Master File" has the meaning set forth in the ISO Tariff.
89. "Mediator" has the meaning set forth in Article Twelve.
90. "Metered Amounts" means the electric energy produced by the Generating Facility and expressed in kWh that qualifies as eligible renewable energy for purposes of the RPS Legislation pursuant to CEC Certification and Verification, subject to a change in the RPS Legislation, as measured by the SCE Meter.
91. "Milestone Schedule" means Seller's schedule to refurbish the Generating Facility as set forth in Exhibit G, including any revisions thereto in accordance with this Agreement.
92. "Moody's" means Moody's Investor Services, Inc.
93. "MW" means a megawatt (or 1,000 kilowatts) of electric energy generating capacity or power output.
94. "MWh" means a megawatt-hour (or 1,000 kilowatt-hours) of electric energy.
95. "Market Redesign and Technology Update" or "MRTU" has the meaning set forth in Section 3.03.
96. "NERC Holidays" has the meaning set forth in Exhibit O.
97. "Non-Defaulting Party" has the meaning set forth in Section 6.02.
98. "Non-Major Maintenance Year" means any Term Year in which Seller does not conduct Major Maintenance of the Generating Facility.
99. "Notice" means notices, requests, statements or payments provided in accordance with Section 10.08 and Exhibit C.

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100. "Operate," "Operating" or "Operation" means to provide (or cause the provision of) all the operation, engineering, purchasing, repair, supervision, training, inspection, testing, protection, use, management, improvement, replacement, refurbishment, retirement, and maintenance activities associated with operating the Generating Facility in accordance with Prudent Electrical Practices.
101. "Party" or "Parties" have the meaning set forth in the Preamble.
102. "Performance Assurance" means collateral in the form of either cash, Letter(s) of Credit, or other security acceptable to SCE.
103. "Permits" means all applications, approvals, authorizations, consents, filings, licenses, orders, permits or similar requirements imposed by any Governmental Authority, or the ISO, in order to develop, construct, operate, maintain, improve, refurbish and retire the Generating Facility or to Schedule and deliver the electric energy produced by the Generating Facility to SCE, including the Authority to Construct permit.
104. "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.
105. "Production Tax Credits" or "PTC" means 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 open-loop biomass fuel for which the Generating Facility is eligible.
106. "Prudent Electrical Practices" means those practices, methods and procedures generally accepted and followed by prudent operators of electric energy generating facilities in the Western United States similar to the Generating Facility 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

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

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

- a) Equipment, materials, resources, and supplies, including spare parts inventories, are available to meet the Generating Facility's needs;
 - b) Sufficient operating personnel are available at all times and are adequately experienced and trained and licensed as necessary to operate the Generating Facility properly and efficiently, and are capable of responding to reasonably foreseeable emergency conditions whether caused by events on or off the Site;
 - c) Preventive, routine, and non-routine maintenance and repairs are performed on a basis that ensures reliable, long term and safe operation of the Generating Facility, and are performed by knowledgeable, trained, and experienced personnel utilizing proper equipment and tools;
 - d) Appropriate monitoring and testing are performed to ensure equipment is functioning as designed;
 - e) Equipment is not operated in a reckless manner, in violation of manufacturer's guidelines or in a manner unsafe to workers, the general public, or the Transmission Provider's electric system or contrary to environmental laws, permits or regulations or without regard to defined limitations such as, flood conditions, safety inspection requirements, operating voltage, current, volt ampere reactive (VAR) loading, frequency, rotational speed, polarity, synchronization, and control system limits; and
 - f) Equipment and components designed and manufactured to meet or exceed the standard of durability that is generally used for electric energy generating facilities operating in the Western United States and will function properly over the full range of ambient temperature and weather conditions reasonably expected to occur at the Site and under both normal and emergency conditions.
107. "Resource Adequacy Benefits" means the rights and privileges attached to the Generating Facility that satisfy any entity's resource adequacy obligations, as those obligations are set forth in any Resource Adequacy Rulings.
108. "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

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Authority, as such Decisions, rulings, laws, rules or regulations may be amended or modified from time-to-time during the Term.

109. "RPS Legislation" means the State of California Renewable Portfolio Standard Program, as codified at California Public Utilities Code Section 399.11, et seq.
110. "S&P" means the Standard & Poor's Rating Group.
111. "SCE" has the meaning set forth in the Preamble.
112. "SCE Meter" has the meaning set forth in Section 3.06.
113. "SCE's IVR" has the meaning set forth in Section 3.10(d).
114. "Schedule," "Scheduled" or "Scheduling" means the action of Seller and SCE, or their 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.
115. "Scheduled Amounts" means the Scheduled quantity, expressed in kWh, of electric energy from the Generating Facility in the form of Scheduling Coordinator Trades confirmed to SCE on any given day, hour, or relevant period at the Delivery Point.
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.
117. "Scheduling Coordinator Trades" or "SC-to-SC Trades" means Scheduling Coordinator to Scheduling Coordinator trades of electric energy from the Generating Facility by the Seller, or Seller's authorized agent, to SCE in accordance with the ISO Tariff.
118. "Secured Interest" has the meaning set forth in Section 8.05(a).
119. "Security Interests" has the meaning set forth in Section 8.04.
120. "Security Documents" has the meaning set forth in Section 8.05(a).
121. "Selected Date" has the meaning set forth in Section 2.03(b).
122. "Seller" has the meaning set forth in the Preamble.

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123. "Seller's Annual Energy Delivery Obligation" has the meaning set forth in Section 3.05(a).
124. "Seller's Debt" means, without duplication, each of the following:
- a) All indebtedness of Seller for borrowed money;
 - b) All obligations of Seller for the deferred purchase price of property or services which purchase price is due more than six months after the date of placing such property in service or taking delivery or title thereto or the completion of such services (other than trade payables not overdue by more than ninety (90) days incurred in the ordinary course of Seller's business);
 - c) All obligations of Seller evidenced by notes, bonds, debentures, Disqualified Stock or other similar instruments;
 - d) All obligations of Seller created or arising under any conditional sale or other title retention agreement with respect to property acquired by Seller (even though the rights and remedies of the seller or lender under such agreement in the event of default are limited to repossession or sale of such property);
 - e) All monetary obligations of Seller under:
 - i) A lease of any property (whether real, personal or mixed) by Seller as lessee that, in conformity with GAAP, is accounted for as a capital lease on the balance sheet of Seller;
 - ii) A so-called synthetic, off-balance sheet or tax retention lease; or
 - iii) An agreement for the use or possession of property creating obligations which do not appear on the balance sheet of Seller but which, upon the insolvency or bankruptcy of Seller, would be characterized as indebtedness of Seller (without regarding to accounting treatment);
 - f) All obligations, contingent or otherwise, of Seller under acceptance, letter of guaranty, letter of credit or similar facilities;
 - g) All obligations of Seller with respect to any redeemable equity interests in Seller, including in the case of preferred stock at the greater of the voluntary or involuntary liquidation preference plus accrued and unpaid dividends;
 - h) All obligations of Seller with respect to any swaps, caps or collar agreements or similar arrangements to hedge against fluctuations in interest rates or currency exchange rates or the exchange of nominal interest obligations,

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either generally or under specific contingencies, in each case, valued at the aggregate net mark-to-market value;

- i) All indebtedness of others referred to in clauses a) through h) above guaranteed by Seller, or in effect guaranteed by Seller through an agreement:
 - i) To pay or purchase such indebtedness or to advance or supply funds for the payment or purchase of such indebtedness;
 - ii) To purchase, sell or lease (as lessee or lessor) property, or to purchase or sell services, primarily for the purpose of enabling the debtor to make payment of such indebtedness or to assure the holder of such indebtedness against loss;
 - iii) To supply funds to or invest in the debtor (including any agreement to pay for property or services irrespective of whether such property is received or such services are rendered); or
 - iv) Otherwise to assure a creditor against loss; and
- j) Without duplication of the foregoing, all indebtedness referred to in clauses a) through i) above secured by any lien on property (including accounts and contract rights) owned by Seller.

The outstanding amount of indebtedness as described above at any date shall be the outstanding balance at such date of all unconditional obligations as described above and, with respect to contingent obligations as described above, the maximum liability upon the occurrence of the contingency giving rise to the obligation.

Notwithstanding the foregoing, the term "Seller's Debt" as used herein shall not include Seller's obligations under this Agreement and the Lease (provided that such Lease does not constitute an obligation of Seller described in clause e) of the first sentence of this definition).

- 125. Seller's Debt to Equity Ratio" means the ratio of Seller's Debt to Seller's Equity.
- 126. "Seller's Equity" means the aggregate net equity of Seller as set forth on its balance sheet prepared in accordance with GAAP.
- 127. "Seller's Transmission Consultant" means an independent consultant selected by Seller who will analyze the scope of congestion or curtailments that may be experienced by the Generating Facility during the Term, or transmission upgrades that may be required to mitigate congestion or curtailments.

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128. "Settlement Interval" means any one sixty (60) minute time interval beginning on any hour and ending on the next hour (e.g. 12:00 to 01:00, 01:00 to 02:00, etc.).
129. "Simple Interest Payment" means a dollar amount calculated by *multiplying* the:
- a) Dollar amount on which the Simple Interest Payment is based; *times*
 - b) Federal Funds Effective Rate or Interest Rate as applicable; *times*
 - c) The result of *dividing* the number of days in the calculation period *by* 360.
130. "Site" means the real property on which the Generating Facility is, or will be located, as further described in Section 1.01(b) and Exhibit B or as adjusted in accordance with Section 3.08.
131. "Site Control" means that Seller satisfies the criteria of Section 3.07(a).
132. "Startup Deadline" means the date set forth in Section 1.02 by which Seller must have achieved Initial Operation as set forth in Section 2.03, subject to extension as provided in this Agreement.
133. "Station Use" means the electric energy produced by the Generating Facility that is either:
- a) Used within the Generating Facility to power the lights, motors, control systems and other electrical loads that are necessary for Operation; or
 - b) Consumed within the Generating Facility's electric energy distribution system as losses.
134. "Supplemental Lost Output" has the meaning set forth in Section 3.16.
135. "Supplemental Lost Output Report" has the meaning set forth in Section 3.16.
136. "Term" has the meaning used in Section 1.04.
137. "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.
138. "Termination Payment" has the meaning set forth in Section 6.03.
139. "TLF" means a measure of all net electrical losses, as determined by the Transmission Provider, associated with the transmission of electric energy through the electric system from the high voltage side of the Generating Facility's substation

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QFID# 1209, Imperial Valley Resource Recovery Company, L.L.C.

bus bar to the interface with the ISO Grid, also known as the transmission loss factor, as may be periodically revised by the Transmission Provider.

140. "TMM(s)" means the tie meter multipliers as determined by the ISO representing the calculation of all electrical losses over the ISO Grid associated with the transmission of electric energy delivered at an ISO Control Area boundary, which values are, as of the Effective Date, posted by the ISO on its website. The values used in this Agreement shall 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.
141. "TOD Period(s)" means the time of delivery period(s) set forth in Exhibit K.
142. "TOD Period Energy Payment" has the meaning set forth in Section 4.02(a).
143. "Transmission Provider" means any entity or entities responsible for the interconnection of the Generating Facility with a Control Area or transmitting the Metered Amounts on behalf of Seller from the Generating Facility to the Delivery Point.
144. "Unique Interchange ID" means the identifier assigned by the ISO to a Scheduling Coordinator that:
- a) Uniquely identifies individual interchange schedules for Seller; and
 - b) Is a component of that SC's Master File.
145. "Unincluded Capacity" has the meaning set forth in Section 3.04(d).
146. "Uninstructed Imbalance Energy" has the meaning set forth in Appendix A of the ISO Tariff.
147. "Web Client" shall have the meaning set forth in Section 3.10(d).
148. "WECC" means the Western Electricity Coordinating Council, the regional reliability council for the Western United States, Northwestern Mexico and Southwestern Canada.

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

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

EXHIBIT B

Generating Facility and Site Description

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

EXHIBIT B*Generating Facility And Site Description*1. Generating Facility Description.

An existing 18 MW Biomass plant in cold standby. Management is in the process of bringing the unit back on line and making capital improvements that improve the plants reliability.

The plant consists of a Zurn Energy traveling grate boiler with supplemental gas burner. The fuel handling system delivers up to 22 tons of fuel per hour to the boiler, with redundancies to ensure maximum on-line performance. Steam is converted to electrical power by a Dresser Rand Impulse turbine generator unit. A reverse pulse air bagogue, acid gas scrubbers and a urea injection system reduce and control the plant's emissions.

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2. Site Description.

Legal Description:

BOOK 1928 PAGE 345

Tract 180, Township 14 South, Range 14 East, S.B.M., in the County of Imperial, State of California, according to the Official Plat thereof.

EXCEPTING THEREFROM a one-fourth interest in the oil, gas, hydrocarbon substances, and minerals, including but not limited to hot water, steam, thermal energy and extractable minerals in and under the real property described above. Hot water, steam, and thermal energy includes and means natural, geothermal water and/or steam, the natural heats of the earth and the energy present in, resulting from, or created by, or which may be extracted from the natural heat of the earth, or heat present below the surface of the earth in whatever form such heat or energy occurs. Extractable minerals includes and means minerals in solution in any well effluence, all minerals and gases produced from any well or wells on the herein described land or by condensing steam or processing water produced from the effluence of any such well or wells, and any water produced from the effluence of any such well or wells, and water produced from condensation of steam, as excepted in the Deed from Mojave Farms, a California General Partnership, Recorded December 12, 1985 in Book 1551, Page 692 of Official Records.

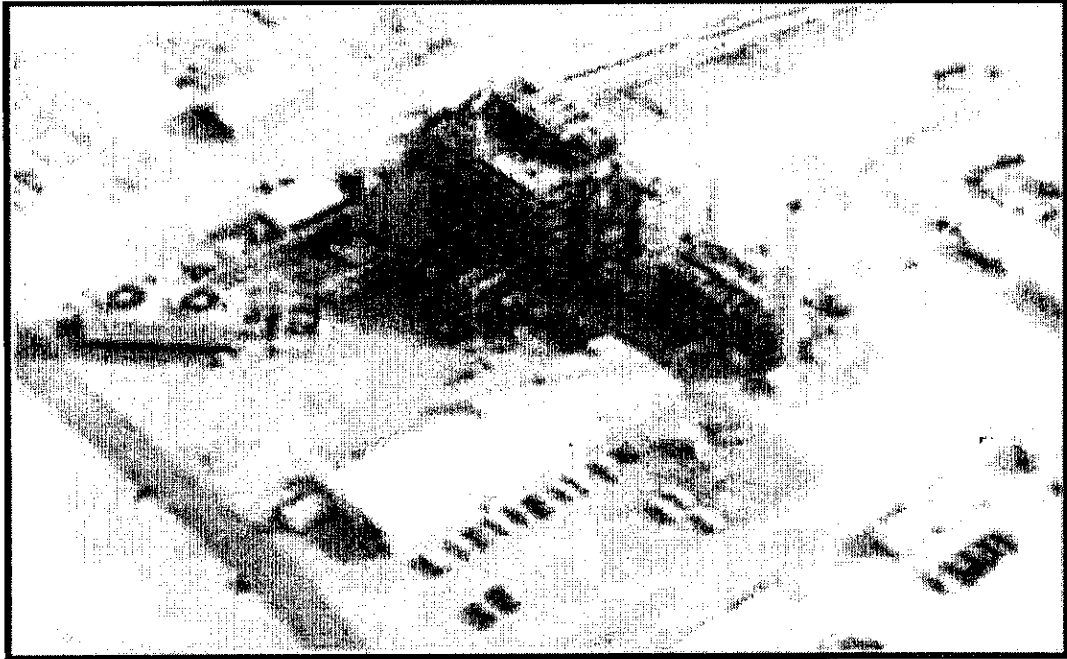
ALSO EXCEPTING THEREFROM 75% of all minerals of whatever kind or nature located in or under said land below a depth of 500 feet from the surface including but not limited to oil, gas, or other hydrocarbon substances, and hot water, steam, thermal energy, geothermal water and/or steam, the natural heat of the earth and the energy present in, resulting from, or created by, or which may be extracted from the natural heat of the earth, or the heat or energy occurs, together with any extractable minerals including minerals in solution from any well or wells on the leased land or otherwise or by means of condensing steam, all with out the right of surface entry as excepted and reserved in the Deed form Central Valley Ginning Co., Inc., a California Corporation and Robert Martin and Patricia Martin, husband and wife, Recorded June 17, 1988 in Book 1665, Page 940 of Official Records.

Recorder's Memo: Poor Record Is

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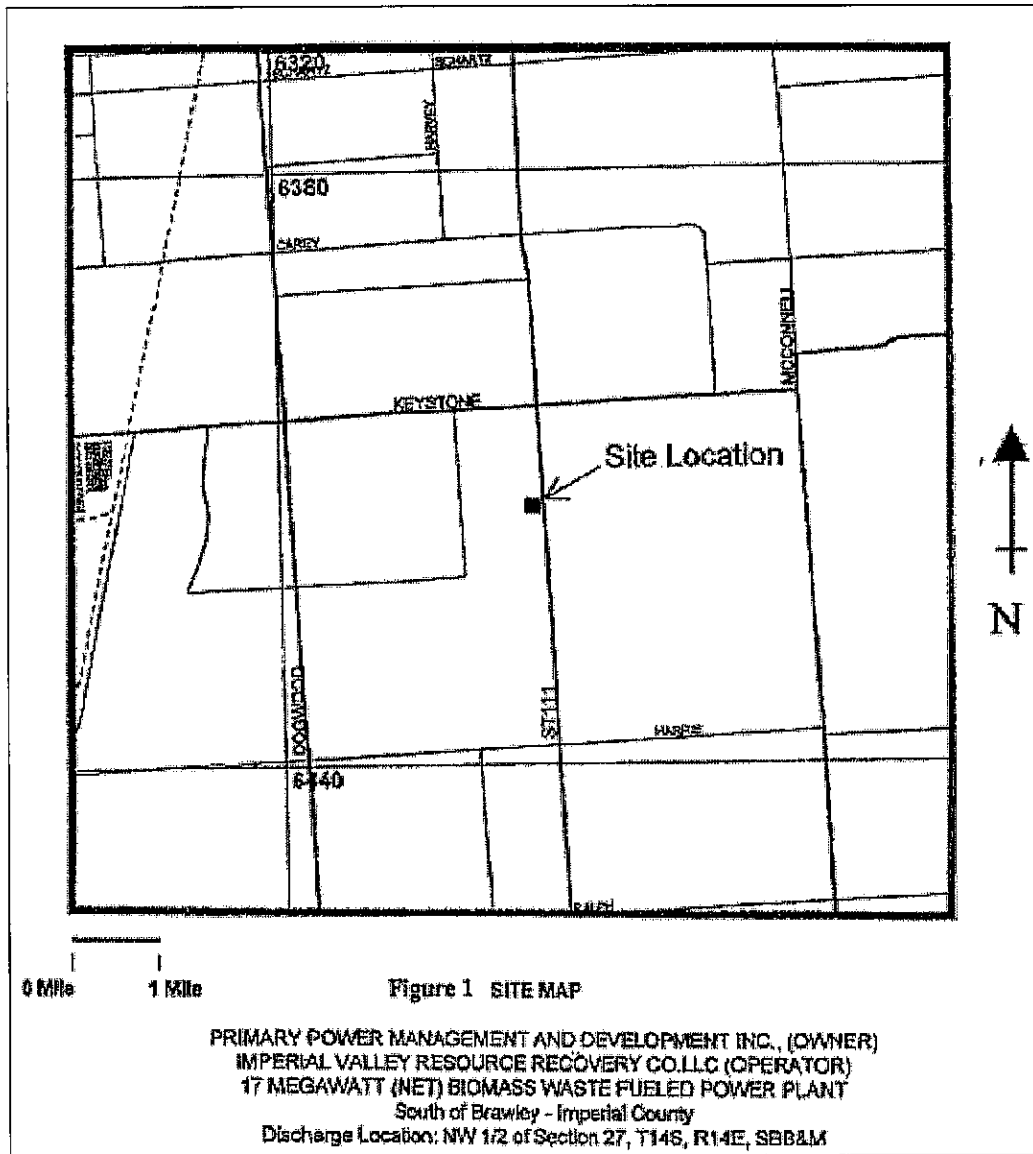
QFID# 1209, Imperial Valley Resource Recovery Company, L.L.C.

Aerial Photograph



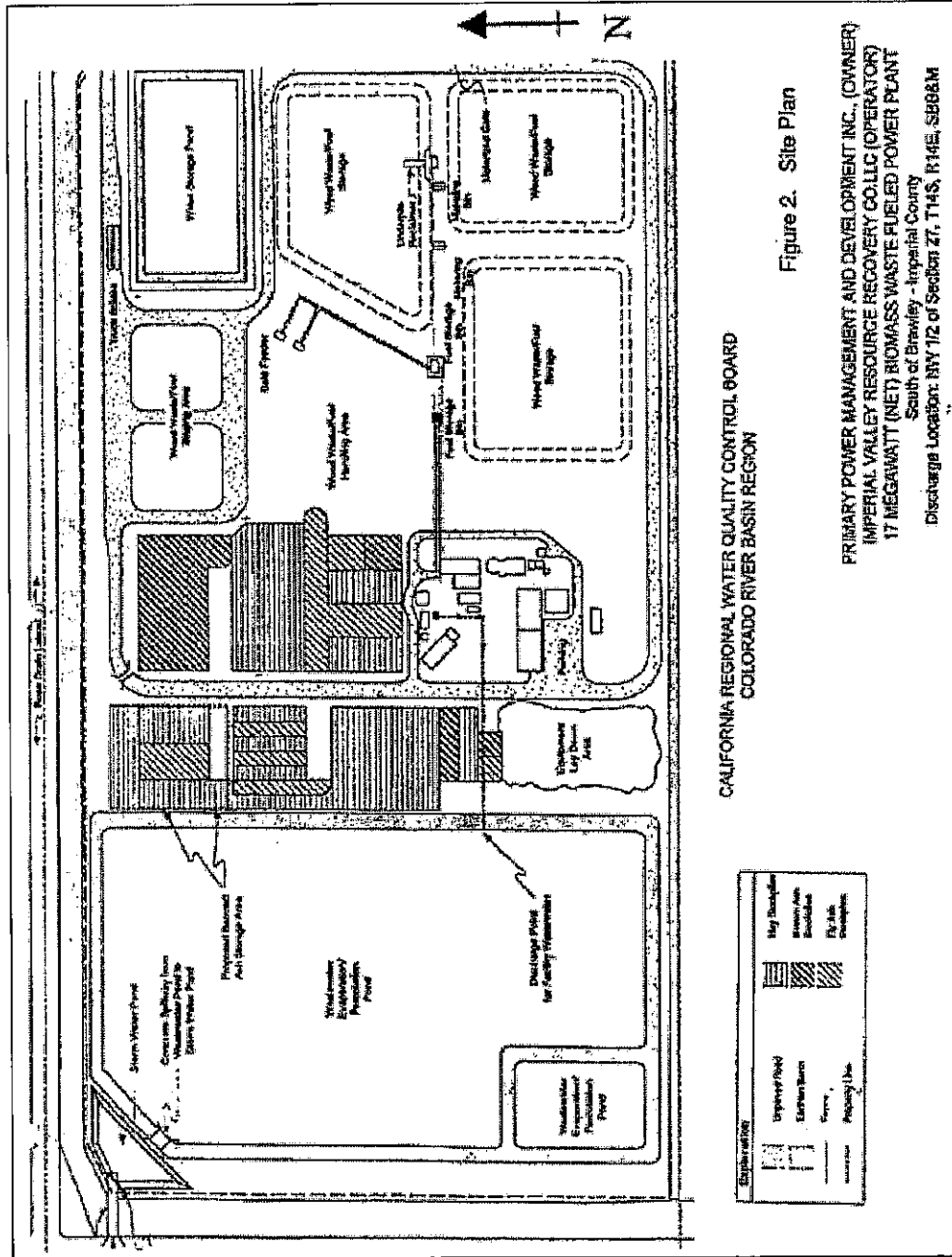
The contents of this document are subject to restrictions on disclosure as set forth herein.

Site Map:



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

Site Plan:



*** End of EXHIBIT B ***

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

EXHIBIT C

Notice List

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

EXHIBIT C

Notice List

<p>IMPERIAL VALLEY RESOURCE RECOVERY COMPANY, L.L.C. ("Seller")</p>	<p>SOUTHERN CALIFORNIA EDISON COMPANY ("SCE")</p>
<p>All Notices are deemed provided in accordance with Section 10.08 if made to the address and facsimile number provided below:</p>	<p>Unless otherwise specified, all Notices are deemed provided in accordance with Section 10.08 if made to the Contract Sponsor at the address and facsimile number provided below:</p>
<p>Contract Sponsor: Attn: Roger Silverthorn President Street: 168 E. Center City: Ithaca, MI 48847 Phone: (989) 875-3822 Facsimile: (989) 875-3906</p>	<p>Contract Sponsor: Attn: Director, Renewable and Alternative Power Street: 2244 Walnut Grove Avenue City: Rosemead, California 91770 Phone: (626) 302-1212 Facsimile: (626) 302-1103</p>
<p>Reference Numbers: Duns: N/A Federal Tax ID Number: 33-0792270</p>	<p>Reference Numbers: Duns: 006900818 Federal Tax ID Number: 95-1240335</p>
<p>Contract Administration: Attn: Scott Silverthorn Phone: (414) 933-1214 Facsimile: (414) 933-1223 Email: scotts@primarypower.com</p>	<p>Contract Administration: Attn: Drew Brabb Phone: (626) 302-2498 Facsimile: (626) 302-1102 Email: drew.brabb@sce.com</p>
<p>Scheduling: Attn: Control Room Phone: (760) 344-7200 Facsimile: (760) 344-9965</p>	<p>Generation Operations Center: Phone: (626) 307-4453 Backup: (626) 307-4410</p>

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

Southern California Edison

Confidential Information

QFID# 1209, Imperial Valley Resource Recovery Company, L.L.C.

IMPERIAL VALLEY RESOURCE RECOVERY COMPANY, L.L.C. ("Seller")	SOUTHERN CALIFORNIA EDISON COMPANY ("SCE")
Day Ahead Scheduling: Phone: (760) 344-7200	Day Ahead Scheduling: <u>Manager.</u> Attn: Manager of Day-Ahead Operations Phone: (626) 302- Facsimile: (626) 307-4413 <u>Scheduling Desk.</u> Phone: (626) 307-4425 Backup: (626) 307-4420 Fax: (626) 307-4413 Email: PreSched@SCE.com
Real-Time Scheduling: Phone: (760) 344-7200	Real-Time Scheduling: <u>Manager.</u> Attn: Manager of Real-Time Operations Phone: (626) 302-3308 Facsimile: (626) 307-4416 <u>Operations Desk.</u> Phone: (626) 307-4453 Back-up: (626) 307-4410 Fax: (626) 307-4416 Email: RealTime@SCE.com
Outage Scheduling: Phone: (760) 344-7200	IVR Scheduling: Phone: (626) 302-1145 URL:
Payment Statements: Attn: Peter Volk Phone: (989) 875-3822 Facsimile: (989) 875-3906 Email: petev@primarypower.com	Payment Statements: Attn: Selene Willis Phone: (626) 302-3329 Facsimile: (626) 302-3276 Email: ContractSettlements@SCE.com
Payments: Attn: Peter Volk Phone: (989) 875-3822 Facsimile: (989) 875-3906 Email: petev@primarypower.com	Payments: Attn: Selene Willis Phone: (626) 302-3329 Facsimile: (626) 302-3276 Email: ContractSettlements@SCE.com

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

Southern California Edison

Confidential Information

QFID# 1209, Imperial Valley Resource Recovery Company, L.L.C.

IMPERIAL VALLEY RESOURCE RECOVERY COMPANY, L.L.C. ("Seller")	SOUTHERN CALIFORNIA EDISON COMPANY ("SCE")
<p>Wire Transfer: BNK: Mellon Trust of New England ABA: [REDACTED] REF: [REDACTED]</p> <p>Additional information for apron: DDA (demand deposit account): [REDACTED] FFC (for further credit): [REDACTED]</p>	<p>Wire Transfer: BNK: JP Morgan Chase Bank ABA: [REDACTED] ACCT: [REDACTED]</p>
<p>Credit and Collections: Attn: Peter Volk Phone: (989) 875-3822 Facsimile: (989) 875-3906 Email: petev@primarypower.com</p>	<p>Manager of Credit and Collateral: Attn: Manager of Credit Phone: (626) 302-1129 Facsimile: (626) 302-2517</p>
<p>With additional Notices of an Event of Default or Potential Event of Default to:</p> <p>Attn: Roger Silverthorn Phone: (989) 875-3822 Facsimile: (989) 875-3906 Email: rogers@primarypower.com</p>	<p>With additional Notices of an Event of Default or Potential Event of Default to:</p> <p>Attn: Manager SCE Law Department Power Procurement Section Phone: (626) 302-1212 Facsimile: (626) 302-1904</p>
<p>Guarantor: Attn: Phone: Facsimile: Email:</p>	
<p>Lender: Attn: Phone: Facsimile: Email:</p>	

*** End of EXHIBIT C ***

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

EXHIBIT D

Scheduling Requirements and Procedures

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

EXHIBIT D

Scheduling Requirements and Procedures

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.

(a) Introduction.

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, telephone numbers, facsimile numbers and e-mail addresses.

(c) Notification of Schedule Estimates.

- (i) Seller shall provide SCE electronic files containing a non-binding rolling thirty (30) day estimate of hourly Schedules for the Generating

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QFID# 1209, Imperial Valley Resource Recovery Company, L.L.C.

Facility, beginning at least thirty (30) days prior to Initial Operation. These files shall:

- (1) Be constructed using reasonable file formats, templates, and naming conventions agreed to by the Parties.
 - (2) Include Seller's contact information.
 - (3) Be sent to esmstpoutage@sce.com with a copy to presched@sce.com or as otherwise instructed by SCE.
 - (4) Be updated by close of business each Wednesday.
 - (5) Limit hour-to-hour Schedule changes to no less than one hundred (100) kW.
- (ii) In the event Seller's forecast changes, Seller shall electronically forward an updated rolling thirty (30) day hourly forecast to esmstpoutage@sce.com with a copy to presched@sce.com.
- (d) 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 telephonic notification of all Day-Ahead and Hour-Ahead schedules, followed by written electronic confirmation (e-mail preferred, facsimile accepted).
- (ii) 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. Seller must simultaneously inform its Scheduling Coordinator and SCE of Day-Ahead Schedule changes.
- (iii) Hour-Ahead schedules shall be communicated to SCE's Real-Time Group no later than one half (½) hour prior to the ISO's Hour-Ahead scheduling deadline.
- (iv) The SC-to-SC Trade quantity must match the Generating Facility forecast provided in Section 2(c) of this Exhibit D.

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

QFID# 1209, Imperial Valley Resource Recovery Company, L.L.C.

3. 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.

**** End of EXHIBIT D ****

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

EXHIBIT E

Payment Adjustments for Scheduling Deviations by Seller

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

EXHIBIT E

Payment Adjustments for Scheduling Deviations by Seller

In accordance with the provisions of Section 4.02(b), if in any Settlement Interval, a 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 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 Amount is less than ninety seven percent (97%) of the Delivered Amount, and
- (b) The Market Price is greater than the time-differentiated Energy Price applicable for the Term Year and payable during the Settlement Interval;

then Seller's monthly payment amount shall be reduced by each under-scheduling Settlement Interval adjustment amount calculated by the following formula:

UNDER-SCHEDULING SETTLEMENT INTERVAL ADJUSTMENT AMOUNT =

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

- Where A = The Delivered Amount in the Settlement Interval being calculated.
- B = The Scheduled Amount in the Settlement Interval being calculated.
- C = Energy Price specified in Section 1.05 to this Agreement in \$/kWh (i.e., \$/MWh/1000) payable during the Settlement Interval being calculated.
- D = Market Price for the Settlement Interval being calculated in \$/kWh.
- E = Energy Payment Allocation Factor applicable to the Settlement Interval being calculated.

No under-scheduling adjustment shall be assessed against Seller for a Settlement Interval in which the Scheduled Amount is less than the Delivered Amount if, during such Settlement Interval, the Market Price is equal to or less than the time-differentiated Energy Price payable during the Settlement Interval.

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QFID# 1209, Imperial Valley Resource Recovery Company, L.L.C.

(2) OVER-SCHEDULING ADJUSTMENT.

If during any Settlement Interval;

- (a) The Scheduled Amount is greater than one hundred three percent (103%) of the Delivered Amount, and
- (b) The Market Price is less than the time-differentiated Energy Price applicable for the Term Year and payable during the Settlement Interval;

then Seller's monthly payment amount shall be reduced by each over-scheduling Settlement Interval adjustment amount calculated by the following formula:

OVER-SCHEDULING SETTLEMENT INTERVAL ADJUSTMENT AMOUNT =

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

- Where A = The Delivered Amount in the Settlement Interval being calculated.
- B = The Scheduled Amount in the Settlement Interval being calculated.
- C = Energy Price specified in Section 1.05 to this Agreement in \$/kWh (i.e., \$/MWh/1000) payable during the Settlement Interval being calculated
- D = Market Price for the Settlement Interval being calculated in \$/kWh.
- E = Energy Payment Allocation Factor applicable to the Settlement Interval being calculated.

No over-scheduling adjustment shall be assessed against Seller for a Settlement Interval in which the Scheduled Amount is greater than the Delivered Amount if, during such Settlement Interval, the Market Price is greater than or equal to the time-differentiated Energy Price payable during the Settlement Interval.

*** End of EXHIBIT E ***

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

EXHIBIT F

Energy Replacement Damage Amount

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

EXHIBIT F*Energy Replacement Damage Amount*

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

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

ENERGY REPLACEMENT DAMAGE AMOUNT =

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

Where:

- A = Seller's Annual Energy Delivery Obligation in kWh.
- B = Sum of Metered Amounts over the Term Year in kWh.
- C = Sum of Lost Output over the Term Year in kWh.
- D = Simple average of the Market Price for all Settlement Intervals in the Term Year in \$/kWh.
- E = Energy Price for the applicable Term Year in \$/kWh (i.e., \$/MWh/1000).

Notes:

1. In the above calculation, the result of "(D - E)" shall not be greater than five cents (\$0.05) per kWh or less than two cents (\$0.02) per kWh.
2. If the result of the calculation above is zero or less, Seller shall not be obligated to pay an Energy Replacement Damage Amount.
3. In no event shall SCE pay an Energy Replacement Damage Amount.

***** End of EXHIBIT F *****

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

EXHIBIT G

Seller's Milestone Schedule

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

QFID# 1209, Imperial Valley Resource Recovery Company, L.L.C.

EXHIBIT G
Seller's Milestone Schedule

<i>No.</i>	<i>Date</i>	<i>Milestones</i>
1	1/15/2007	Executes an Engineering, Procurement and Construction ("EPC") contract.
2	12/1/2007	Completes Financing.
3	2/1/2007	Begins construction of the Generating Facility.
4	10/1/2007	Begins startup activities.
5	10/31/2007	Achieves Initial Operation.
6	11/30/2007	Demonstrates the Contract Capacity.

*** End of EXHIBIT G ***

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

EXHIBIT H

Milestone Progress Reporting Form

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

EXHIBIT H*Milestone Progress Reporting Form*

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

Seller's Milestone Progress Reporting requirement shall begin on the first day of the second full calendar month after the Effective Date of this Agreement and shall end upon Seller's receipt, or forfeiture of its Agreement Deposit.

Each Milestone Progress Report shall include the following items:

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

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

QFID# 1209, Imperial Valley Resource Recovery Company, L.L.C.

14. Pictures, in sufficient quantity and of appropriate detail, in order to document construction and startup progress of the Generating Facility, Transmission Provider's electric system and all other interconnection utility services.

In the first Milestone Progress Report Seller shall include copies of current agreements with providers of transmission or interconnection services, Permits, and approvals relating to the CEC Certification and Verification, and any amendments thereto, pursuant to Section 3.12.

**** End of EXHIBIT H ****

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

EXHIBIT I

Form of Guaranty Agreement

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

EXHIBIT I*Form of Guaranty Agreement*1. Guaranty.

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

2. Guaranty Limit.

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

3. Guaranty Absolute.

Guarantor agrees that its obligations under this Guaranty are irrevocable, absolute, independent and unconditional and shall not be affected by any circumstance which

QFID# 1209, Imperial Valley Resource Recovery Company, L.L.C.

constitutes a legal or equitable discharge of a guarantor or surety. In furtherance of the foregoing and without limiting the generality thereof, Guarantor agrees as follows:

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

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

QFID# 1209, Imperial Valley Resource Recovery Company, L.L.C.

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

4. Termination; Reinstatement.

- (a) The term of this Guaranty is continuous until the earlier of: (i) the date on which the Obligations have been performed or paid in full or (ii) with regard to future transactions, the date on which Guarantor provides Beneficiary with written notice of such termination, and any such termination shall become effective no earlier than sixty (60) calendar days from the date Beneficiary receives such written notice from Guarantor. Unless otherwise agreed in writing by Beneficiary, no such notice or termination shall release Guarantor from any liability as to any amount or performance that is at the time owing under the Agreement.

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

QFID# 1209, Imperial Valley Resource Recovery Company, L.L.C.

- (b) Notwithstanding the provisions of Paragraph 4(a) hereof, this Guaranty shall be reinstated if at any time following the termination of this Guaranty under Paragraph 4(a) hereof, any payment by Guarantor under this Guaranty or pursuant hereto is rescinded or must otherwise be returned by the Beneficiary or other person upon the insolvency, bankruptcy, reorganization, dissolution or liquidation of Principal, Guarantor or otherwise, and is so rescinded or returned to the party or parties making such payment, all as though such payment had not been made. Such period of reinstatement shall continue until satisfaction of the conditions contained in, and shall continue to be subject to, the provisions of Paragraphs 4(a) hereof. If all or any portion of the Obligations are paid by Principal, the obligations of Guarantor hereunder shall continue and remain in full force and effect or be reinstated, as the case may be, in the event that all or any part of such payment(s) are rescinded or recovered directly or indirectly from Beneficiary as a preference, fraudulent transfer or otherwise, and any such payments which are so rescinded or recovered shall constitute Obligations for all purposes under this Guaranty.
5. Bankruptcy; Post-Petition Interest.
- (a) So long as any Obligations remain outstanding, Guarantor shall not, without the prior written consent of Beneficiary, commence or join with any other person in commencing any bankruptcy, reorganization or insolvency proceedings of or against Principal. The obligations of Guarantor under this Guaranty shall not be reduced, limited, impaired, discharged, deferred, suspended or terminated by any proceeding, voluntary or involuntary, involving the bankruptcy, insolvency, receivership, reorganization, liquidation or arrangement of the Principal or by any defense which Principal may have by reason of the order, decree or decision of any court or administrative body resulting from any such proceeding.
- (b) Guarantor acknowledges and agrees that any interest on any portion of the Obligations which accrues after the commencement of any proceeding referred to in clause (a) above (or, if interest on any portion of the Obligations ceases to accrue by operation of law by reason of the commencement of said proceeding, such interest as would have accrued on such portion of the Obligations if said proceedings had not been commenced) shall be included in the Obligations because it is the intention of Guarantor and Beneficiary that the Obligations which are guaranteed by Guarantor pursuant to this Guaranty should be determined without regard to any rule of law or order which may relieve Principal of any portion of such Obligations. Guarantor will permit any trustee in bankruptcy, receiver, debtor in possession, assignee for the benefit of creditors or similar person to pay Beneficiary, or allow the claim of

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Beneficiary with respect to, any such interest accruing after the date on which such proceeding is commenced.

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

6. Subrogation.

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

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

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Guarantor further agrees that to the extent the waiver of its rights of subrogation as set forth herein is found by a court of competent jurisdiction to be void or voidable for any reason, any rights of subrogation Guarantor may have against Principal or against such collateral or security shall be junior and subordinate to any rights Beneficiary may have against Principal and to all right, title and interest Beneficiary may have in such collateral or security. Beneficiary may use, sell or dispose of any item of collateral or security as it sees fit without regard to any subrogation rights that Guarantor may have, and upon any disposition or sale, any rights of subrogation Guarantor may have shall terminate. Guarantor understands that it may record a Request for Notice of Default pursuant to California Civil Code Section 2924b and thereby receive notice of any proposed foreclosure of any real property collateral then securing Principal's obligations under the Agreement. With respect to the foreclosure of any security interest in any personal property collateral then securing the Obligations, Beneficiary agrees to give Guarantor five (5) days' prior written notice, in the manner set forth in Paragraph 17 hereof, of any sale or disposition of any such personal property collateral, other than collateral which is perishable, threatens to decline speedily in value, is of a type customarily sold on a recognized market, or is cash, cash equivalents, certificates of deposit or the like. Guarantor's sole right with respect to any such foreclosure of real or personal property collateral shall be to bid at such sale in accordance with applicable law. Guarantor acknowledges and agrees that Beneficiary may also bid at any such sale and if such collateral is sold to Beneficiary in whole or partial satisfaction of Principal's obligations under the Agreement, including the Obligations (or any portion thereof), Guarantor shall not have any further right or interest with respect thereto. The rights of Beneficiary under this Paragraph 6 are in addition to other rights and remedies which Beneficiary may have.

7. Subordination.

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

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therefore. If Guarantor fails to take any such action, Beneficiary, as attorney-in-fact for Guarantor, is hereby authorized to do so in the name of Guarantor. The foregoing power of attorney is coupled with an interest and cannot be revoked.

8. Waivers of Guarantor.

- (a) Guarantor waives, to the fullest extent permitted by law, the benefit of any statute of limitations affecting its liability under this Guaranty or the enforcement of this Guaranty.

- (b) Guarantor waives any right to require Beneficiary to:
 - (i) Proceed against Principal;
 - (ii) Proceed against or exhaust any security held from Principal or any other party acting under a separate agreement; or
 - (iii) Pursue any other remedy available to Beneficiary.

- (c) Guarantor waives all of the rights and defenses described in subdivision (a) of Section 2856 of the California Civil Code. As used below in this Subparagraph (c), "debtor" and "principal" each refers to Principal, "creditor" refers to Beneficiary, "guarantor" refers to "Guarantor" and "debt" refers to the Obligations. Without limiting the generality of the waiver in the first sentence of this Subparagraph (c), Guarantor desires and intends to, and hereby does, waive each and all of the rights and defenses described below in this Subparagraph (c).
 - (i) The guarantor waives the guarantor's rights of subrogation, reimbursement, indemnification, and contribution and any other rights and defenses that are or may become available to the guarantor by reason of Sections 2787 to 2855, inclusive, of the California Civil Code;
 - (ii) The guarantor waives all rights and defenses that the guarantor may have because the debtor's debt is secured by real property. This means, among other things:
 - a. The creditor may collect from the guarantor without first foreclosing on any real or personal property collateral pledged by the debtor.
 - b. If the creditor forecloses on any real property collateral pledged by the debtor:

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- (1) The amount of the debt may be reduced only by the price for which that collateral is sold at the foreclosure sale, even if the collateral is worth more than the sale price.
- (2) The creditor may collect from the guarantor even if the creditor, by foreclosing on the real property collateral, has destroyed any right the guarantor may have to collect from the debtor.

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

- (iii) The guarantor waives all rights and defenses arising out of an election of remedies by the creditor, even though that election of remedies, such as a nonjudicial foreclosure with respect to security for a guaranteed obligation, has destroyed the guarantor's rights of subrogation and reimbursement against the principal by the operation of Section 580d of the Code of Civil Procedure or otherwise.
- (e) Guarantor assumes all responsibility for keeping itself informed of Principal's financial condition and all other factors affecting the risks and liability assumed by Guarantor hereunder, and Beneficiary shall have no duty to advise Guarantor of information known to it regarding such risks.
- (f) Guarantor waives any defense arising by reason of the incapacity, lack of authority or any disability or other defense of the Principal, including, without limitation, any defense based on or arising out of the lack of validity or enforceability of the Obligations or by reason of the cessation of liability of the Principal under the Agreement for any reason;
- (g) Guarantor waives any defense based upon any statute or rule of law that provides that the obligation of a surety must be neither larger in amount nor in other respects more burdensome than that of the principal;
- (h) Guarantor waives any defense based upon Beneficiary's errors or omissions in the administration of the Obligations;

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

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- (i) Guarantor waives its right to raise any principles of law, statutory or otherwise, that are or might be in conflict with the terms of this Guaranty and any legal or equitable discharge of Guarantor's obligations hereunder;
- (j) Guarantor waives any rights to setoffs, recoupments or counterclaims against Beneficiary;
- (k) Guarantor waives its right to raise any defenses based upon promptness, diligence, and any requirement that Beneficiary protect, secure, perfect or insure any security interest or lien or any property subject thereto;
- (l) Guarantor waives any defenses or benefits that may be derived from or afforded by law which limit the liability of or exonerate guarantors or sureties, or which may conflict with the terms of this Guaranty;
- (m) Guarantor waives any rights or defenses that Guarantor may have under Sections 2899 and 3433 of the California Civil Code;
- (n) Guarantor waives any defense based upon Beneficiary's election, in any proceeding instituted under the United States Bankruptcy Code, as amended, of the application of Section 1111(b)(2) of the United States Bankruptcy Code, as amended, or any successor statute; and
- (o) Guarantor waives any defense based upon any borrowing or any grant of a security interest under Section 364 of the United States Bankruptcy Code, as amended.

9. No Waiver of Rights by Beneficiary.

No right or power of Beneficiary under this agreement shall be deemed to have been waived by any act or conduct on the part of Beneficiary, or by any neglect to exercise a right or power, or by any delay in doing so, and every right or power of Beneficiary hereunder shall continue in full force and effect until specifically waived or released in a written document executed by Beneficiary.

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

10. Assignment, Successors and Assigns.

This Guaranty shall be binding upon Guarantor, its successors and assigns, and shall inure to the benefit of, and be enforceable by, the Beneficiary, its successors, assigns and creditors, and can be modified only by a written instrument signed by the Beneficiary and the Guarantor. The Beneficiary shall have the right to assign this Guaranty to any person or entity without the prior consent of the Guarantor, *provided, however,* that no such assignment shall be binding upon the Guarantor until it receives written notice of such assignment from the Beneficiary. The Guarantor shall have no right to assign this Guaranty or its obligations hereunder without the prior written consent of the Beneficiary, which shall not be unreasonably withheld. Any reasonable uncertainty on the part of the Beneficiary concerning the ability on the part of any potential assignee of the Guarantor to carry out the Guarantor's obligations hereunder shall be considered a reasonable basis for withholding consent, unless and until the potential assignee can satisfy the Beneficiary, in its sole discretion, that the assignee is capable of performing the obligations of the Guarantor hereunder.

11. Representations of Guarantor.

Guarantor hereby represents and warrants that:

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

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

QFID# 1209, Imperial Valley Resource Recovery Company, L.L.C.

12. Attorneys' Fees.

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

13. Governing Law.

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

14. Construction.

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

15. Amendment; Severability.

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

16. Third Party Rights.

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

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

QFID# 1209, Imperial Valley Resource Recovery Company, L.L.C.

17. Notices.

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

Beneficiary.

Southern California Edison Company
2244 Walnut Grove Avenue, Quad 4-D
Rosemead, CA 91770

Attn: Director, QF Resources
Phone: (626) 302-
Facsimile: (626) 302-

with a copy to:

Southern California Edison Company
2244 Walnut Grove Avenue, Quad 4-D
Rosemead, CA 91770

Attn: Director, Risk Control
Phone: (626) 302-
Facsimile: (626) 302-

Guarantor.

*[Guarantor]
[Street]
[City, State Zip]*

Attn:
Phone:
Facsimile:

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

QFID# 1209, Imperial Valley Resource Recovery Company, L.L.C.

Principal.

*[Principal]
[Street]
[City, State Zip]*

Attn:
Phone:
Facsimile:

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

Guarantor.

_____ *[legal name]*

By: _____
Title: _____
Date: _____

Beneficiary.

Agreed to by Beneficiary for purposes of establishing the creditworthiness of Principal, as partial security for the Agreement.

SOUTHERN CALIFORNIA EDISON COMPANY

By: _____
Title: _____
Date: _____

*** End of EXHIBIT I ***

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

EXHIBIT J

Non-Disclosure Agreement

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

EXHIBIT J

Non-Disclosure Agreement

NON-DISCLOSURE AGREEMENT

Between

SOUTHERN CALIFORNIA EDISON COMPANY

and

PRIMARY POWER INTERNATIONAL, LLC

SOUTHERN CALIFORNIA EDISON COMPANY ("SCE"), a California corporation, and PRIMARY POWER INTERNATIONAL, LLC ("PPI"), a Michigan limited liability company, hereby enter into this Non-Disclosure Agreement ("Agreement").

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

RECITALS

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

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

AGREEMENT

NOW, THEREFORE, the Parties agree as follows:

1. For purposes of this Agreement, all oral or written communications exchanged between the Parties on or after the Effective Date, as set forth in Section 10 of this Agreement, as part of the Proposal shall be referred to as "Confidential Information." Any such communications must comply with the provisions of Section 6 herein to be considered Confidential Information.
2. The Parties agree to treat Confidential Information as confidential with respect to third parties and shall not disclose Confidential Information except as specifically authorized herein or as specifically agreed to by both Parties in writing.

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

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

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

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

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

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

QFID# 1209, Imperial Valley Resource Recovery Company, L.L.C.

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

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

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

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

QFID# 1209, Imperial Valley Resource Recovery Company, L.L.C.

- (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 PPI: Primary Power International, LLC
168 E. Center St.
Ithaca, MI 48847
Telephone: (989) 875-3822
Facsimile: (989) 875-3906

With copy to:

Ufer & Spaniola, P.C.
Attention: Adam T. Frost, Esq.
5440 Corporate Drive, Suite 250
Troy, MI 48098
Telephone: (248) 641-7000
Facsimile: (248) 641-5120

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

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

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

QFID# 1209, Imperial Valley Resource Recovery Company, L.L.C.

12. Any waiver of the requirements and provisions of this Agreement shall be in writing.

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

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

QFID# 1209, Imperial Valley Resource Recovery Company, L.L.C.

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

**PRIMARY POWER
INTERNATIONAL, LLC,**

a Michigan limited liability company

By:

**SOUTHERN CALIFORNIA EDISON
COMPANY,**

a California corporation

By:



Kevin Payne
Director, QF Resources

Date: _____

Date: 11/7/05

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

QFID# 1209, Imperial Valley Resource Recovery Company, L.L.C.

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

**PRIMARY POWER
INTERNATIONAL, LLC,**


**SOUTHERN CALIFORNIA EDISON
COMPANY,**

a Michigan limited liability company

a California corporation

By:

By:



Kevin Payne
Director, QF Resources

Date: 11/21/05

Date: _____

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

Southern California Edison

AMENDMENT NO. ONE

to

NON-DISCLOSURE AGREEMENT

between

SOUTHERN CALIFORNIA EDISON COMPANY

and

PRIMARY POWER INTERNATIONAL, LLC

SOUTHERN CALIFORNIA EDISON COMPANY ("SCE"), a California corporation, and PRIMARY POWER INTERNATIONAL, LLC ("PPI"), a Michigan limited liability company, hereby enter into this Amendment No. One ("Amendment") to the Non-Disclosure Agreement ("Agreement") between them dated November 21, 2005.

SCE and PPI shall sometimes be referred to in this Amendment individually as a "Party" and jointly as the "Parties."

RECITALS

- A. SCE and PPI executed the Agreement in respect to a proposal ("Proposal") submitted by PPI in response to a Request for Proposals issued by SCE. The Agreement provides for confidential treatment of discussions and negotiations about the Proposal. The Proposal contemplates that PPI will sell power to SCE from PPI's Imperial Valley Resource Recovery facility.
- B. PPI would like to include a potential investor in the Imperial Valley Resource Recovery facility and the potential investor's consultant (Chateau Energy Inc. and SCT Energy Inc., respectively) in PPI's negotiations with SCE regarding the Proposal.
- C. Accordingly, the Parties wish to amend the Agreement to add Chateau Energy Inc. and SCT Energy Inc. as PPI's Permitted Disclosees thereunder and to hold a Party responsible for a breach of the Agreement by such Party's Permitted Disclosee.

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

Southern California Edison

AGREEMENT

NOW, THEREFORE, the Parties agree as follows:

1. Paragraph 2 of the Agreement shall be amended to read as follows:

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

Accordingly, Parties may disclose Confidential Information only to (i) their employees, directors, financial advisors, attorneys, or accountants who have a strict need to know solely for the purpose of assisting the Party in evaluating the Proposal, or in subsequent discussions or negotiations regarding the Proposal and (ii) in the case of PPI, Chateau Energy Inc., a Texas corporation, and SCT Energy, Inc., a Nevada corporation, solely for the purpose of assessing an investment by Chateau Energy Inc. in the Imperial Valley Resource Recovery facility, and who read and agree to abide by this Agreement ("Permitted Disclosee"), *provided* each Permitted Disclosee must read and agree to abide by this Agreement prior to the disclosure to such Permitted Disclosee of Confidential Information and *provided further* that each Party is responsible for any breach of this Agreement by its Permitted Disclosees.

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

2. Except as expressly amended herein, all terms and conditions in the Agreement shall remain in full force and effect and apply to this Amendment as though incorporated herein.
3. This Amendment shall be effective as of the first day that it is fully executed by both Parties.
4. This Amendment may not be modified except by a written agreement executed by both Parties.
5. This Amendment 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.
6. The signatories hereto represent that they have been duly authorized to enter into this Agreement on behalf of the Party for whom they sign.

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

Southern California Edison

Confidential Information

QFID# 1209, Imperial Valley Resource Recovery Company, L.L.C.

Southern California Edison

7. This Agreement may be signed in counterparts, each of which shall be deemed an original, and facsimile signatures shall be considered to be original signatures.

**PRIMARY POWER
INTERNATIONAL, LLC,**

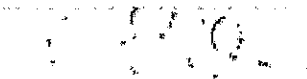
**SOUTHERN CALIFORNIA EDISON
COMPANY,**

a Michigan limited liability company

a California corporation

By:

By:



Royce S. Silvestri
President



Stuart Hemphill
Director, QF Resources

Date: 6-8-06

Date: 6/8/06

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

QFID# 1209, Imperial Valley Resource Recovery Company, L.L.C.

Imperial Valley Resource Recovery Co. LLC

Southern California Edison Company
2244 Walnut Grove Avenue
Rosemead, CA 91770

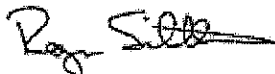
June 29, 2006

Attn: Director of QF Resources

Reference is made to that certain Non-Disclosure Agreement between Primary Power International, LLC ("PPI"), a Michigan limited liability company, and Southern California Edison Company ("SCE"), a California corporation, dated on or about November 21, 2005, as amended on June 8, 2006, and attached hereto (the "NDA").

This letter will confirm that Imperial Valley Resource Recovery Company, LLC, a Delaware limited liability company, has read the attached NDA, agrees to be bound by it along with and to the same extent as PPI, and agrees to make all of the terms and conditions contained in the NDA enforceable against it.

Sincerely,

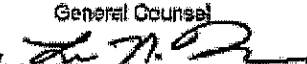


Imperial Valley Resource Recovery Company
Roger Silverthorn
President

Accepted and agreed this 30th day of June 2006

Accepted and agreed this 11th day of July 2006
SOUTHERN CALIFORNIA EDISON COMPANY

By: 
Name: Stuart Headphill
Title: Director, QF Resources

APPROVED
STEPHEN E. PICKETT
Sr. Vice President and
General Counsel
By: 
July 7th, 2006 Attorney

3505 Highway 111 • Imperial, CA 92251 • Phone: 760-344-7200 • Fax: 760-344-9965

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

AMENDMENT NO. TWO

to

NON-DISCLOSURE AGREEMENT

between

SOUTHERN CALIFORNIA EDISON COMPANY

and

**PRIMARY POWER INTERNATIONAL, LLC, and IMPERIAL VALLEY
RESOURCE RECOVERY COMPANY, LLC**

SOUTHERN CALIFORNIA EDISON COMPANY ("SCE"), a California corporation, on the one hand and PRIMARY POWER INTERNATIONAL, LLC ("PPI"), a Michigan limited liability company, and IMPERIAL VALLEY RESOURCE RECOVERY COMPANY, LLC ("IVRR"), a Delaware limited liability company, on the other hand, hereby enter into this Amendment No. Two ("Amendment No. Two") to the Non-Disclosure Agreement ("Agreement") between them dated November 21, 2005.

SCE, PPI and IVRR shall sometimes be referred to in this Amendment No. Two individually as a "Party" and jointly as the "Parties."

RECITALS

- A. SCE and PPI executed the Agreement in respect to a proposal ("Proposal") submitted by PPI in response to a Request for Proposals issued by SCE. The Agreement provides for confidential treatment of discussions and negotiations about the Proposal. The Proposal contemplates that PPI will sell power to SCE from PPI's Imperial Valley Resource Recovery facility.
- B. Because PPI wanted to include a potential investor in the Imperial Valley Resource Recovery facility and the potential investor's consultant (Chateau Energy Inc. and SCT Energy Inc., respectively) in PPI's negotiations with SCE regarding the Proposal, on June 8, 2006, SCE and PPI amended the Agreement to add Chateau Energy Inc. and SCT Energy Inc. as PPI's Permitted Disclosees thereunder and to hold a Party responsible for a breach of the Agreement by such Party's Permitted Disclosee ("Amendment No. One").
- C. Through a letter agreement dated on or about July 11, 2006, IVRR and SCE supplemented the Agreement to bind IVRR, a wholly owned subsidiary of PPI, to the Agreement along with and to the same extent as PPI, and to make all the terms and conditions contained in the Agreement enforceable against IVRR.

- 1 -

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

QFID# 1209, Imperial Valley Resource Recovery Company, L.L.C.

- D. PPI and IVRR would now like to include, PCI Energy Capital ("PCI"), an Illinois limited liability company, and a potential buyer of IVRR, in PPI's and IVRR's negotiations with SCE regarding the Proposal.
- E. Accordingly, the Parties wish to amend the Agreement to add PCI as PPI's and IVRR's Permitted Disclosee thereunder. The Parties also wish to amend the Agreement to eliminate Chateau Energy Inc. and SCT Energy Inc., as Permitted Disclosees under the Agreement.

AGREEMENT

NOW, THEREFORE, the Parties agree as follows:

- 1. Paragraph 2 of the Agreement shall be deleted and replaced in its entirety with the following:

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

Accordingly, Parties may disclose Confidential Information only to (i) their employees, directors, financial advisors, attorneys, or accountants who have a strict need to know solely for the purpose of assisting the Party in evaluating the Proposal, or in subsequent discussions or negotiations regarding the Proposal and (ii) in the case of PPI and IVRR, PCI, solely for the purpose of assessing a potential purchase of IVRR by PCI, and who read and agree to abide by this Agreement ("Permitted Disclosee"), *provided* each Permitted Disclosee must read and agree to abide by this Agreement prior to the disclosure to such Permitted Disclosee of Confidential Information and *provided further* that each Party is responsible for any breach of this Agreement by its Permitted Disclosees.

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

- 2. Except as expressly amended herein, all terms and conditions in the Agreement shall remain in full force and effect and apply to this Amendment No. Two as though incorporated herein.
- 3. This Amendment No. Two shall be effective as of the first day that it is fully executed by all Parties.
- 4. This Amendment No. Two may not be modified except by a written agreement executed by all Parties.

- 2 -

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


QFID# 1209, Imperial Valley Resource Recovery Company, L.L.C.

- 5. This Amendment No. Two 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.
- 6. The signatories hereto represent that they have been duly authorized to enter into this Amendment No. Two on behalf of the Party for whom they sign.
- 7. This Amendment No. Two may be signed in counterparts, each of which shall be deemed an original, and facsimile signatures shall be considered to be original signatures.

PRIMARY POWER INTERNATIONAL, LLC,
a Michigan limited liability company

SOUTHERN CALIFORNIA EDISON COMPANY,
a California corporation

By: _____

By: 
Stuart Hemphill
Director, Renewable and Alternative Power

Date: _____

Date: 8/21/04

IMPERIAL VALLEY RESOURCE RECOVERY COMPANY, LLC,
a Delaware limited liability company

By: _____


Date: _____

QFID# 1209, Imperial Valley Resource Recovery Company, L.L.C.

- 5. This Amendment No. Two 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.
- 6. The signatories hereto represent that they have been duly authorized to enter into this Amendment No. Two on behalf of the Party for whom they sign.
- 7. This Amendment No. Two may be signed in counterparts, each of which shall be deemed an original, and facsimile signatures shall be considered to be original signatures.

PRIMARY POWER INTERNATIONAL, LLC,
a Michigan limited liability company

SOUTHERN CALIFORNIA EDISON COMPANY,
a California corporation

By: 

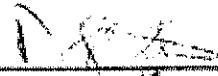
Roger Silverthorn
President

By: _____
Stuart Hemphill
Director, Renewable and Alternative Power

Date: 8/22/06

Date: _____

IMPERIAL VALLEY RESOURCE RECOVERY COMPANY, LLC,
a Delaware limited liability company

By: 

Roger Silverthorn
President

Date: 8/22/06

EXHIBIT K

Time of Delivery Periods

and

Energy Payment Allocation Factors

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

EXHIBIT K
*Time of Delivery Periods
 and
 Energy Payment Allocation Factors*

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

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

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

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

*** End of EXHIBIT K ***

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

EXHIBIT L

Procedure for Partial or Full Return of Agreement Deposit

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

EXHIBIT L*Procedure for Partial or Full Return of Agreement Deposit*1. Seller's Request for Agreement Deposit Refund.

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

- (a) Termination pursuant to Sections 2.04(a) or Section 5.05; or
- (b) The date and hour selected by Seller, on or before any applicable Firm Operation Date, during which Seller claims it has demonstrated the applicable Contract Capacity ("Demonstration Hour").

2. Full Return of Agreement Deposit for Termination of Agreement.

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

3. Full or Partial Return of Agreement Deposit for Demonstrating Net Contract Capacity.

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

- (a) Retrieve interval data downloaded from the SCE Meter for the twelve (12) hour periods before and after the Demonstration Hour;
- (b) Complete a site visit to verify that the Generating Facility was developed in accordance with the Generating Facility and Site Description set forth in Exhibit B and to determine the Demonstrated Contract Capacity based on the Generating Facility Capacity.
- (c) If the Demonstrated Contract Capacity as determined in Item 3(a) above is greater than or equal to the Contract Capacity,

then Seller shall qualify to receive a full return of the Agreement Deposit.
- (d) If the Demonstrated Contract Capacity as determined in Item 3(a) above is less than the Contract Capacity,

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

QFID# 1209, Imperial Valley Resource Recovery Company, L.L.C.

then Seller shall qualify to receive a return of only a portion of the Agreement Deposit based upon the level of the Demonstrated Contract Capacity.

- (e) Based upon the information in Item 3(a), calculate the amount of Agreement Deposit refund due Seller pursuant to Sections 3.04(c) and 3.04(d).
- (f) Provide Notice to Seller of the amount of Agreement Deposit being returned pursuant to Item 3(d), the amount of Agreement Deposit forfeited, as applicable, and the reason(s) that a forfeiture of all or part of the Agreement Deposit is appropriate.
- (g) Return any Agreement Deposit due Seller if such Agreement Deposit was posted in the form of cash.
- (h) Return the Letter of Credit to the issuing bank if the total amount of the posted Agreement Deposit is due Seller. If Seller is only entitled to a partial return of the Agreement Deposit SCE shall submit a drawing certificate on the Letter of Credit for the amount of Agreement Deposit forfeited by Seller, after which SCE shall release the remaining balance of the Letter of Credit.

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

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

EXHIBIT M

Seller's Estimate of Lost Output

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

EXHIBIT M*Seller's Estimate of Lost Output*

Lost Output, as used in Section 3.16 shall be estimated by Seller in accordance with the procedures described in this Exhibit M.

Seller shall collect the measurement data and perform the engineering calculations specified below in one (1) or more Microsoft Excel Workbooks (the "Lost Output Workbook") provided in a form and naming convention approved by SCE.

Seller shall update the Lost Output Workbook each month and shall include the latest revision of the Lost Output Workbook with its monthly Lost Output Report.

1. Log of Lost Output Events.

The Log shall be kept on a single Worksheet in the Lost Output Workbook. It shall identify the date, time, duration, cause and percentage by which the Generating Facility's output was curtailed for each Lost Output event.

2. Data Collection.

Seller shall record all hourly Metered Amounts, during the Term, in the Lost Output Workbook on a single worksheet labeled "Metered Amounts".

The worksheet shall be arranged with:

- (a) One (1) column for the date;
- (b) One (1) column for the time;
- (c) One (1) column for the weekday;
- (d) One (1) column for the recorded Metered Amounts for each Term Year; and
- (e) One (1) row for each one (1) hour period during the Term Year.

Seller shall also identify, on a worksheet labeled "Curtailements" and organized in a manner similar to the Metered Amounts worksheet described above, all hours when the Generating Facility's Scheduled Amounts were reduced due to any of the conditions or occurrences enumerated in the definition of Lost Output.

3. Generating Facility Monthly Profiles.

Seller shall create a profile of the estimated Generating Facility's Metered Amounts during an average week of each month during the Term (the "Monthly Profile").

Monthly Profiles shall include the seven (7) day period beginning at midnight on Sunday and ending at midnight on the following Saturday. They shall have a total of 168 average hourly Metered Amount periods (i.e. 7 days times 24 hours per day equals 168 hourly periods).

Each Monthly Profile shall be created by averaging the Metered Amounts during the same one (1) hour interval of each day of the week within the month of the current Term Year and up to the three preceding Term Years, if available.

All hours during which the Generating Facility's Scheduled Amounts were reduced due to any of the conditions or occurrences enumerated in the definition of Lost Output.

If a Monthly Profile is incomplete because of missing hourly averages or if more than one half (1/2) of the one (1) hour averages are calculated using less than three (3) hourly Metered Amounts, the Monthly Profile for that month shall be based upon a comparable winter season or summer season month, as appropriate, agreed upon by the Parties for the Term Year in which the Lost Output amount is being calculated.

All Term Year Monthly Profiles, for the same calendar month, shall be calculated on a worksheet dedicated to that month.

Worksheets shall be labeled "Jan Profile," "Feb Profile," etc. Each of the twelve (12) profile worksheets shall have one (1) column for the weekday, one (1) column for the time, one (1) column for each Term Year Monthly Profile and one (1) row for each of the one hundred sixty eight (168) hourly periods.

Seller shall also create twelve (12) line charts, one for each calendar month, on dedicated worksheets formatted with the charts sized to fit on the worksheet. Each chart shall include one data series for each Term Year. Chart sheets shall be labeled "Jan Chart," "Feb Chart," etc.

4. Seller's Estimate of Lost Output.

Lost Output shall be estimated by Seller for all Term Years on one worksheet labeled "LO Years".

The worksheet shall include:

- (a) One (1) column for the date;

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

QFID# 1209, Imperial Valley Resource Recovery Company, L.L.C.

- (b) One (1) column for the time;
- (c) One (1) column for the weekday;
- (d) One (1) column for Seller's Lost Output estimate for each Term Year; and
- (e) One (1) row for each one (1) hour period during the Term Year.

Seller's estimate of Lost Output, for any hour during which the Generating Facility was not offline due to any of the conditions or occurrences enumerated in the definition of Lost Output shall be equal to the Metered Amount average included in the Monthly Profile for the same hour, of the same weekday, of the month in the same Term Year in which the Lost Output event occurred less any Metered Amounts during the hour.

Seller shall summarize its Lost Output calculation results on a one (1) worksheet that has one (1) column for the month, one (1) column for each Term Year and one (1) row for each calendar month. Seller's claim for Lost Output, at the end of any Term Year, shall be equal to the sum of the monthly Lost Output amounts, for the appropriate Term Year column, on this summary worksheet. This worksheet shall be labeled "LO Summary."

SCE reserves the right to recalculate any Lost Output estimated by Seller.

**** End of EXHIBIT M ****

EXHIBIT N

Form of Letter of Credit

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

EXHIBIT N

Form of Letter of Credit

IRREVOCABLE NONTRANSFERABLE STANDBY

LETTER OF CREDIT

Reference Number: _____

Transaction Date:

BENEFICIARY:

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

Ladies and Gentlemen:

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

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

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

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

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

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

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

The facsimile transmittal shall be deemed delivered when received.

Drawings made by facsimile transmittal are deemed to be the operative instrument without the need of originally signed documents.

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

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

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

Banking charges shall be the sole responsibility of the Applicant.

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

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

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

AUTHORIZED SIGNATURE for Issuer

(Name)

Title: _____

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

ATTACHMENT A

DRAWING CERTIFICATE

TO [ISSUING BANK NAME]

IRREVOCABLE NON-TRANSFERABLE STANDBY LETTER OF CREDIT

No. _____

DRAWING CERTIFICATE

Bank

Bank Address

Subject: Irrevocable Non-transferable Standby Letter of Credit

Reference Number: _____

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

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

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

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

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

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

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

Beneficiary: SOUTHERN CALIFORNIA EDISON COMPANY

By:

Name:

Title:

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

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

EXHIBIT O

Mark-to-Market Calculation

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

EXHIBIT O

Mark-to-Market Calculation

On any Calculation Date, the Mark-to-Market Value for this transaction will be calculated by taking the sum of the present values for each of the next 24 or 48 full or partial months (based on the renewable technology), or the remaining full or partial month(s) in the Term of this Agreement, if the time remaining in the Term is less than 24 or 48 months (as applicable), using the equation below:

$$\text{Mark-to-Market Value} = \sum_i^n (FMP_i - EP) \times (A \times B \times Hrs_i)$$

Where:

- n = The number of forward months (full or partial) included in the Mark-to-Market Value calculation, pursuant to the table below. If the number of months remaining in the Term of this Agreement is less than the 24 or 48 month period (based on ERR type), *then* the number of months included in the Mark-to-Market Value calculation shall be equal to the remaining number of months (full or partial) in the Term of this Agreement.

ERR Type	24 months	48 months
Solar Photovoltaic	X	
Solar Thermal		
Less than 50 MW	X	
Greater than 50 MW		X
Wind	X	
Small Hydroelectric		X
Geothermal		X
Biomass Fuel		
Less than 50 MW	X	
Greater than 50 MW		X
Landfill Gas	X	
Digester Gas	X	
Fuel cell using Renewable Fuels	X	
Ocean wave, ocean thermal or tidal current	X	
Qualifying Municipal Solid Waste Conversion	X	

- i = A forward month within the Mark-to-Market Value calculation.
- FMP_i = The forward market price (expressed in \$/MWh) for an SP-15 product in month *i*, obtained or solicited in good faith from regularly published and

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

QFID# 1209, Imperial Valley Resource Recovery Company, L.L.C.

widely-distributed forward price assessments from a broker that is not an Affiliate of either Party and who is actively participating in that market..

If a forward market price cannot be obtained for a specific month, *then* a monthly price shall be calculated for that month by disaggregating quarterly and/or calendar year forward price assessments that contain the month into .no arbitrage equivalent monthly prices.

Based on the renewable technology of the resource offered, the following SP-15 forward market prices shall be used in the Mark-to-Market Value calculation:

<i>ERR Type</i>	<i>On-Peak*</i>	<i>Flat (7x24)*</i>
Solar Photovoltaic	X	
Solar Thermal	X	
Wind		X
Small Hydroelectric		X
Geothermal		X
Biomass Fuel		X
Landfill Gas		X
Digester Gas		X
Fuel cell using Renewable Fuels		X
Ocean wave, ocean thermal or tidal current		X
Qualifying Municipal Solid Waste Conversion		X

* For purposes of the Mark-to-Market Value calculation:

- (i) An on-peak period shall begin at 6 a.m. and end at 10 p.m., PPT, Monday through Saturday, excluding NERC Holidays;
- (ii) An off-peak period shall consist of all other hours Monday through Sunday, including NERC Holidays; and
- (iii) A flat (7x24) period shall include all hours of every day.

A flat (7x24) price is calculated as the weighted average of on-peak and off-peak prices, with the weighing based on the number of hours in each on-peak and off-peak period. NERC Holidays are defined as New Year’s Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day. Each of these dates are defined at the following address:
<http://www.nerc.com/~oc/offpeaks.html>

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

QFID# 1209, Imperial Valley Resource Recovery Company, L.L.C.

- EP = The Energy Price specified in Section 1.05 (expressed in \$/MWh)
- A = The Contract Capacity (expressed in MW) specified in Section 1.01(d) subject to reduction as set forth in Section 3.04(d).
- B = The capacity factor (expressed as a percent) specified in Section 1.01(e).
- Hrs_{*i*} = The number of hours remaining in month *i*.

For present value purposes, the discount rate is the appropriate yield curve using U.S. Treasury constant maturities securities as posted by the Federal Reserve in their H.15 daily update at the following address:

<http://www.ustreas.gov/offices/domestic-finance/debt-management/interest-rate/yield.html>

A positive Mark-to-Market Value implies SCE has the potential for realization of market gains and thus has exposure to Seller's default or non-performance.

*** End of EXHIBIT O ***

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