



SOUTHERN CALIFORNIA
EDISON

An *EDISON INTERNATIONAL* Company

RENEWABLE POWER PURCHASE AND SALE AGREEMENT

between

SOUTHERN CALIFORNIA EDISON COMPANY

and

MM TAJIGUAS ENERGY LLC

(QFID #1210)

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RENEWABLE POWER PURCHASE AND SALE AGREEMENT

between

SOUTHERN CALIFORNIA EDISON COMPANY

and

MM TAJIGUAS ENERGY LLC

(QFID #1210)

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) **MM Tajiguas Energy LLC** ("Seller"), a Delaware limited liability company, whose principal place of business is c/o Algonquin Power Systems, LFG, LLC, 2845 Bristol Circle, Oakville, Ontario L6H 7H7 Canada.

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

Seller owns and Operates and is willing to expand 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.

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ARTICLE ONE. SPECIAL CONDITIONS1.01 Generating Facility.

- (a) Name: Tajiguas Landfill
- (b) Location of Site: 14470 Calle Road, Goleta, California 93117 as further described in Exhibit B.
- (c) Eligible Renewable Energy Resource Type: Landfill Gas
- (d) Contract Capacity shall be equal to **2.84 MW** (the "Initial Facility") subject to adjustment as set forth below:
 - (i) Seller shall have the right to increase the Contract Capacity up to an additional **1.5 MW** (the "Expansion"), for a potential total Generating Facility size of **4.34 MW**. To exercise its right to increase the Contract Capacity, Seller must do all of the following:
 - (1) No later than one (1) year after the Effective Date (the "Expansion Election Date") Seller shall:
 - a) Provide written Notice to SCE of Seller's Expansion election of up to an additional 1.5 MW, including a specification of the Contract Capacity for the Expansion in MW, which Seller elects to develop;
 - b) Provide a revised Exhibit B describing the Generating Facility and Site Description including the Expansion; and
 - c) Provide a Milestone Schedule in the form of Exhibit G for the Expansion; and
 - (2) Post with SCE a Development Fee for the Expansion, as provided for in Section 3.05(b); and
 - (ii) The Contract Capacity may be reduced as set forth in Section 3.05(g).
- (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:

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EXPECTED ANNUAL NET ENERGY PRODUCTION, in kWh per Term Year

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

Where:

A = Contract Capacity in kW at the beginning of the applicable Term Year.

B = 75% capacity factor.

C = 8,760 hours per year.

1.02 On-Line Deadline and Startup Deadline.

- (a) The On-line Deadline shall be January 1, 2007, or such other date as provided in this Agreement or as may be agreed to in a writing signed by both Parties.
- (b) If Seller provides Notice to SCE of Seller's election to construct the Expansion, the Startup Deadline shall be March 31, 2009 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.

- (a) The Firm Operation Date for the Initial Facility shall be January 31, 2007 or such other date as may be agreed to in a writing signed by both Parties.
- (b) The Firm Operation Date for the Expansion shall be the date that is six (6) months after Initial Operation for the Expansion, plus any additional days for Force Majeure as provided in Section 5.04(b), or as may be agreed to in a writing signed by both Parties.

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 two hundred forty (240) months (twenty (20) years) from the month of the Firm Operation Date.

*QFID# 1210, MM Tajiguas Energy LLC***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 of the Initial Facility to beginning of Term Year 1 | 71.58 |
| 1 | 71.58 |
| 2 | 72.85 |
| 3 | 74.14 |
| 4 | 75.84 |
| 5 | 76.84 |
| 6 | 78.24 |
| 7 | 79.67 |
| 8 | 81.14 |
| 9 | 82.65 |
| 10 | 84.20 |
| 11 | 85.78 |
| 12 | 87.40 |
| 13 | 89.06 |
| 14 | 90.77 |
| 15 | 92.52 |
| 16 | 94.31 |
| 17 | 94.14 |
| 18 | 98.02 |
| 19 | 99.95 |
| 20 | 101.93 |

1.06 Performance Assurance Amount.**Five hundred thirty-two dollars (\$532) per kW of Contract Capacity.**

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1.07 Seller's Guarantor.

- (a) Guarantor: Algonquin Power Income Fund.
Algonquin Power Income Fund is accepted by SCE as the Guarantor as of the Effective Date of this Agreement.
- (b) Guaranty Amount: **Five hundred thirty-two dollars (\$532) per kW** of Contract Capacity.
- (c) Cross Default Amount: \$0.

1.08 Seller's Debt to Equity Ratio.

1.0:1.0.

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

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

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

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

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

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

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

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

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

(b) Interconnection and Transmission Provider Services.

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

(c) Seller's Regulatory and Governmental Filings.

(i) Within thirty (30) days after the Effective Date, Seller shall obtain CEC Certification and Verification for the Initial Facility and provide to SCE a copy of such CEC Certification and Verification.

(ii) Within ninety (90) days after the Expansion Election Date as provided for in Section 1.01(d)(i)(1), Seller shall file an application or other appropriate request with the CEC for CEC Certification and Verification for the Generating Facility including any Expansion and

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shall file all applications or appropriate requests with the proper authorities for all other Permits.

- (iii) Seller shall expeditiously seek CEC Certification and Verification, and all Permits, including promptly responding to any requests for information from the requesting authority.

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 demonstrated to SCE's reasonable satisfaction that Seller has executed all necessary Transmission Provider and CAISO agreements, obtained all Permits and taken all steps necessary for it to:
 - (1) Effect delivery of electric energy from the Initial Facility to the Delivery Point; and
 - (2) Allow SCE to Schedule the electric energy produced by the Initial Facility with the CAISO;
- (iii) Seller has demonstrated to SCE's reasonable satisfaction that Seller has complied with its obligations with respect to the CAISO Approved Meter as set forth in Section 3.07(a);
- (iv) Seller has provided the DLF used by the Transmission Provider in the administration of the transmission service agreement for the Generating Facility;
- (v) SCE has been authorized by the CAISO to Schedule the electrical energy produced by the Initial Facility with the CAISO;
- (vi) Seller has obtained CEC Certification and Verification for the Initial Facility and has provided SCE with a copy of such CEC Certification and Verification;
- (vii) Seller has posted with SCE the Performance Assurance required under Section 1.06 and Section 8.02;
- (viii) SCE and Seller have executed all Security Documents required by Section 8.04;

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- (ix) Seller has furnished to SCE the insurance documents required under Section 10.11(b); and
 - (x) Seller has achieved Initial Operation for the Initial Facility.
- (b) Initial Operation.
- (i) Initial Operation for the Initial Facility shall be deemed to have been achieved on the date selected by Seller (the "Selected Date for the Initial Facility") to begin Forecasting and delivering Product to SCE from the Initial Facility under this Agreement subject to the requirements for the Selected Date for the Initial Facility set forth in Section 2.03(b)(iii).
 - (ii) Initial Operation for the Expansion shall be deemed to have been achieved on the date selected by Seller (the "Selected Date for the Expansion") to begin Forecasting and delivering Product to SCE from the Expansion subject to the requirements for the Selected Date for the Expansion set forth in this Section 2.03(b)(ii) and Section 2.03(b)(iii). The Selected Date for the Expansion shall be no later than sixty (60) days from the first date that the Expansion operates in parallel with the applicable Transmission Provider's electric system.
 - (iii) Seller shall provide at least three (3) Business Days advance Notice to SCE of the Selected Date for the Initial Facility and of any Selected Date for the Expansion.
 - (1) In addition, as of the Selected Date for the Initial Facility:
 - a) The Initial Facility shall be Operating in parallel with the applicable Transmission Provider's electric system; and
 - b) Seller shall be Forecasting electric energy to SCE from the Initial Facility at the Delivery Point.
 - (2) As of the Selected Date for the Expansion:
 - a) The Generating Facility (including the Expansion) shall be Operating in parallel with the applicable Transmission Provider's electric system;
 - b) Seller shall have provided SCE a copy of the CEC Certification and Verification for the Generating Facility including the Expansion; and

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- c) Seller shall be Forecasting and delivering electric energy from the Generating Facility including the Expansion to SCE at the Delivery Point.

2.04 Termination Rights of the Parties.**(a) Termination Rights of Both Parties.**

- (i) 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 in the event CPUC Approval has not been obtained within one hundred eighty (180) days after SCE files the request for CPUC Approval and a Notice of termination is given on or before the two hundred tenth (210th) day after SCE files the request for CPUC Approval.
- (ii) Either Party shall have the right to terminate the Expansion on Notice, which shall be effective five (5) Business Days after such Notice is given in the event that CEC Certification and Verification, and all required Permits for the Generating Facility including the Expansion have not been obtained by Seller within eighteen (18) months after the Expansion Election Date and a Notice of termination is given on or before the end of the nineteenth (19th) month after the Expansion Election Date.

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.

(b) Termination Right of Seller.

Seller shall have the right to terminate this Agreement on Notice, which shall be effective five (5) Business Days after such Notice is given in the event that the rights of Seller to collect, purchase or use landfill gas produced at the Tajiguas Landfill in Santa Barbara County, California as the primary fuel in the Generating Facility are either terminated or materially diminished, whether through a termination of:

- (i) The Landfill Gas Lease; or
- (ii) Any landfill gas purchase and sale agreement entered into between Seller and the County of Santa Barbara with respect to the purchase and use in the Generating Facility by Seller of landfill gas collected at the Tajiguas Landfill;

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provided, however, that, any such Notice given under this Section 2.04(d):

- (1) May not be given on or before March 10, 2018;
- (2) Must be accompanied by all notices received by Seller or the lessee, owner or holder of the landfill gas collection, use or purchase rights from the County or other documentation which memorializes or demonstrates the termination or material diminution of Seller's rights to the collection, purchase or use of the Landfill Gas and the date that Seller first became aware of such termination or material diminution; and
- (3) Shall be timely only if given by Seller to SCE on or before thirty (30) days following the date on which Seller is first notified or otherwise becomes aware that its rights to collect, purchase or use landfill gas as the primary fuel in the Generating Facility are either terminated or materially diminished.

(c) 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.

(d) 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 any such 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 3.06(b);
- (ii) The obligation to make a Termination Payment under Section 6.03;

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- (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 Scheduled Amounts prior to termination under Section 4.02;
- (ix) The obligation of Seller to make payments for CAISO Charges and CAISO Sanctions that are attributable to Seller's actions or omissions during the Term pursuant to Section 3.21 and Exhibit O;
- (x) 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
- (xi) 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 or Expansion.

If Seller terminates this Agreement, as provided in Section 2.04(b) or 5.05(b) (based upon a Force Majeure as to which Seller is the Claiming Party), or if SCE terminates this Agreement as provided in Section 3.05(c), 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.

If Seller has elected to develop the Expansion pursuant to Section 1.01(d)(i) and thereafter terminates the Expansion, as provided in Section 2.04(a)(ii) or Section 5.05(a) (based upon a Force Majeure as to which Seller is the Claiming Party), or if SCE terminates the Expansion as provided in Sections 2.04(a)(ii) or 3.05(d), 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 any electrical generating capacity installed at the Site to a party

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other than SCE for a period of two (2) years following the effective date of such termination.

The prohibitions on contracting and sale in the preceding paragraphs 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 ****

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

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

Seller shall use best efforts and Prudent Electrical Practices to Forecast and convey the *entire* Delivered Amounts during the Term to SCE.

In addition, Seller shall dedicate and convey any and all Environmental Attributes, Capacity Attributes and Resource Adequacy Benefits generated or produced by Seller beginning from the Effective Date 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 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 Generating Facility for resource adequacy purposes;
- (c) Complying with all current and future CAISO tariff or other applicable provisions that address resource adequacy, including but not limited to provisions regarding performance obligations and penalties; and
- (d) Committing to SCE the full output of the Generating Facility.

SCE will have the exclusive right, at any time or from time-to-time beginning from the Effective Date, 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.

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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 Delivered 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 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 Exclusive Right to Additional Generating Facilities.

Neither Seller nor Seller's Affiliates may sell, or enter into an agreement to sell Product from any Additional Generating Facilities to a party other than SCE for the Term of this Agreement and any sales of Product from Additional Generating Facilities to SCE shall be on terms (including energy price) substantially similar to, or no less favorable to SCE than, those set forth in this Agreement.

3.04 Permits and CAISO Agreements.

- (a) Seller shall be responsible for obtaining and maintaining any and all interconnection, and distribution service rights (including all regulatory approvals) required to effect delivery of the electric energy from Seller's Generating Facility to the Delivery Point.
- (b) Seller shall pay all Transmission Provider and any other charges directly caused by, associated with, or allocated to the interconnection of the

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Generating Facility to the Transmission Provider's electric system, and the delivery of electric energy from Seller's Generating Facility at the Delivery Point.

- (c) Seller shall secure all required CAISO agreements, certifications and approvals, including a Participating Generator Agreement and a Meter Service Agreement.
 - (i) Seller's Participating Generator Agreement, Schedule 1, shall:
 - (1) List the Initial Facility, and any Expansion, as a single aggregated unit; and
 - (2) Indicate that the generating capacity from the Initial Facility and any Expansion is contracted to SCE under a bi-lateral agreement.
 - (ii) Seller's Meter Service Agreement, Schedule 1 shall treat the Initial Facility, and any Expansion, as a single generating unit with a single electric energy meter.

3.05 Agreement Deposit and Development Fee.

(a) Posting the Agreement Deposit.

Seller shall post and thereafter maintain an Agreement Deposit equal to twenty dollars (\$20) for each kilowatt of Contract Capacity for the Initial Facility 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's obligation to meet the On-line Deadline as provided for in Section 1.02(a) and to demonstrate the Contract Capacity for the Initial Facility by the Firm Operation Date for the Initial Facility as provided for in Section 1.03(a).

The Agreement Deposit shall be in the form of either a cash deposit or 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 Section 4.06 of this Agreement.

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

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.

(b) Posting the Development Fee.

Within thirty (30) days following the Expansion Election Date, Seller shall post and thereafter maintain a Development Fee equal to twenty dollars (\$20) for each kilowatt of Contract Capacity for the Expansion specified pursuant to Section 1.01(d)(i).

The Development Fee shall be held by SCE as security for Seller maintaining adequate progress in development of the Expansion in accordance with the Milestone Schedule, as set forth in Exhibit G, to meet the Startup Deadline as provided for in Section 1.02(b) and installing and demonstrating the Contract Capacity for the Expansion by the Firm Operation Date for the Expansion as provided for in Section 1.03(b).

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

Any Development Fee 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 Development Fee by means of a Letter of Credit, such Letter of Credit shall be provided substantially in the form of Exhibit N.

(c) Forfeiture of the Agreement Deposit for Failure to Meet the On-line Deadline, Extension of the On-line Deadline.

Subject to Seller's right to extend the On-line Deadline as provided in this Section 3.05(c) in the event that Initial Operation for the Initial Facility does not occur on or before the On-line 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 On-line 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 On-line Deadline to and excluding the Selected Date for the Initial Facility ("Daily Delay Liquidated Damages").

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To extend the On-line 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 On-line Deadline along with its estimate of the duration of the extension and its payment of Daily Delay Liquidated Damages for the full estimated On-line Deadline extension period.

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

The Daily Delay Liquidated Damages payments applicable to days included in any On-line 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 On-line Deadline was actually extended.

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

(d) Forfeiture of the Development Fee
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 3.05(d), in the event that Initial Operation for the Expansion does not occur on or before the Startup Deadline, SCE shall be entitled to retain the entire Development Fee and terminate the Expansion and, subject to Section 2.05(b), neither party shall have liability for damages for failure to deliver or purchase Product pursuant to the Expansion 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 Development Fee per day for each day (or portion thereof) from and including the Startup Deadline to and excluding the Selected Date for the Expansion ("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 for the Expansion subject to the advance Notice, estimation and payment terms applicable to the original Startup Deadline extension for the Expansion.

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

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 for the Expansion was actually extended.

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

(e) Full Return of the 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:

- (i) Subject to Seller's achievement of Initial Operation for the Initial Facility by the On-line Deadline or any extended On-line Deadline as provided in Section 3.05(c), Seller demonstrates the full Contract Capacity for the Initial Facility specified in Section 1.01(d) in accordance with the procedure set forth in Exhibit L on or before the Firm Operation Date for the Initial Facility.
- (ii) If this Agreement is terminated in accordance with Section 2.04(a) or Section 5.05(b), *provided that*, a termination under Section 5.05(b) 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 for the Initial Facility by the On-line Deadline or demonstrating the full Contract Capacity specified in Section 1.01(d) by the Firm Operation Date for the Initial Facility.

(f) Full Return of Development Fee.

The Development Fee 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 3.05(d), Seller demonstrates the full Contract Capacity for the Expansion in accordance with the procedure set forth in Exhibit L on or before the Firm Operation Date for the Expansion; or
 - (ii) If the Expansion is terminated in accordance with Sections 2.04(a) or 5.05(a), *provided that*, a termination under Section 5.05(a) shall only entitle Seller to a return of the Development Fee if the termination is based upon a Force Majeure which prevents Seller from achieving Initial Operation for the Expansion by the Startup Deadline or demonstrating full Contract Capacity by the Firm Operation Date for the Expansion.
- (g) Deficient Installation of Contract Capacity; Partial Forfeiture and Partial Return of the Agreement Deposit or Development Fee.
- (i) If, on or before the Firm Operation Date for the Initial Facility, Seller has demonstrated only a portion of the Contract Capacity for the Initial Facility specified in Section 1.01(d) in accordance with the procedure set forth in Exhibit L (the "Demonstrated Contract Capacity for the Initial Facility") by the Firm Operation Date for the Initial Facility, *then* Seller shall only be entitled to a return of the portion of the Agreement Deposit for the Initial Facility equal to the product of twenty dollars (\$20) per kilowatt times the kilowatts of Demonstrated Contract Capacity for the Initial Facility.

In addition, the Contract Capacity for the Initial Facility shall be reduced to the Demonstrated Contract Capacity for the Initial Facility, and the Expected Annual Net Energy Production shall be adjusted pursuant to Section 1.01(d)(ii), 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 for the Initial Facility ("Unincluded Capacity for the Initial Facility");

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 electrical generating capacity installed at the Site to a party other than SCE.

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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.

- (ii) If, on or before the Firm Operation Date for the Expansion, Seller has achieved Initial Operation for the Expansion by the Startup Deadline as provided in Section 1.02(b), but is only able to demonstrate a portion of the Contract Capacity for the Expansion specified in Section 1.01(d)(i) in accordance with the procedure set forth in Exhibit L (the "Demonstrated Contract Capacity for the Expansion") by the Firm Operation Date for the Expansion, *then* Seller shall only be entitled to a return of the portion of the Development Fee for the Expansion equal to the product of twenty dollars (\$20) per kilowatt times the kilowatts of Demonstrated Contract Capacity for the Expansion.

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

In addition, the Contract Capacity for the Expansion shall be reduced to the Demonstrated Contract Capacity for the Expansion as of the Firm Operation Date for the Expansion, the Expected Annual Net Energy Production shall be adjusted pursuant to Section 1.01(d)(ii), 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 for the Expansion");

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 electrical generating capacity from a generating facility installed at the Site to a party other than SCE for a period of two (2) years following SCE's Notice to Seller of its partial forfeiture of the Development Fee pursuant to Exhibit L.

The prohibitions on contracting and sale in this Section 3.05(g) shall not apply if, prior to entering into the contract or making a sale to a party other than SCE, Seller or Seller's Affiliates provide SCE with a written offer to sell the electric energy, Environmental Attributes, Capacity Attributes and Resource Adequacy Benefits related to Unincluded Capacity to SCE on terms and conditions materially similar to or no less favorable to SCE than the terms and conditions

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

3.06 Seller's Energy Delivery Performance Obligation.

(a) Performance Requirements.

Beginning with the first Term Year, and for each Term Year thereafter during the Term, 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 3.06(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.

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

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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.

3.07 Metering, Communications and Telemetry.

(a) CAISO Approved Meter.

Seller shall:

- (i) Execute a Meter Service Agreement with the CAISO, pursuant to the CAISO Tariff; and
- (ii) Install and pay for any meter and related communications equipment required by SCE or the CAISO.

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

(b) Access to CAISO Approved Meter.

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

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

- (ii) Prior to Initial Operation for the Initial Facility, Seller shall provide instructions to the CAISO granting authorizations or other documentation sufficient to provide SCE with access to the CAISO Approved Meter and to Seller's settlement data on OMAR.

Seller shall promptly inform SCE of meter quantity changes after becoming aware of, or being informed of, any such changes by the CAISO.

(c) CAISO Approved Meter Maintenance.

- (i) Seller shall test and calibrate the CAISO Approved Meter, as necessary, but in no event shall the period between testing and calibration dates be greater than twenty four (24) months.
- (ii) Seller shall replace the CAISO Approved Meter battery at least once every thirty six (36) months.

Notwithstanding the foregoing, in the event the CAISO Approved Meter battery fails, Seller shall replace such battery within one (1) day after its failure.

- (iii) Seller shall use certified test and calibration technicians to perform any work associated with the CAISO Approved Meter.
- (iv) Seller shall inform SCE of test and calibration dates, provide SCE with access to observe and witness such testing and calibration, and provide SCE certified results of tests and calibrations within thirty (30) days after completion.

3.08 Site Control.

- (a) As of the Effective Date, Seller shall have Site Control, which means that Seller shall:
 - (i) Own the Site;

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- (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.

3.09 Site Location.

This Agreement is Site specific as set forth in Section 1.01(b), subject to Seller's right to modify the Site under Section 1.01(d)(i).

3.10 Design.

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

- (a) Designing and constructing the Expansion.
- (b) Using commercially reasonable efforts to acquire all Permits.
- (c) Providing to SCE, at least thirty (30) days prior to the commencement of the Term for the Initial Facility and the anticipated Selected Date for the Initial Facility, the following Generating Facility information:
 - (i) Site plan drawings for the Generating Facility;
 - (ii) Electrical one line diagrams;
 - (iii) Control and data acquisition details and configuration documents;
 - (iv) Major electrical equipment specifications;
 - (v) General arrangement drawings;
 - (vi) Longitude and latitude of each generator;
 - (vii) Artist renderings of the Site, if any;
 - (viii) Aerial photographs of the Site, if any;
 - (ix) Process flow diagrams; and

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- (x) Piping and instrumentation diagrams.
- (d) Providing SCE advance Notice at the earliest practicable time of any proposed changes in Seller's Generating Facility including changes pursuant to any Expansion which such Notice shall include the information set forth in Section 3.10(c) above, along with all specifications and drawings pertaining to any such changes.

3.11 Operation and Record Keeping.

- (a) Seller shall Operate the Generating Facility in accordance with Prudent Electrical Practices.
- (b) Commencing upon the date on which all CAISO agreements have been executed by Seller and continuing throughout the Term of this Agreement, Seller shall comply with all provisions of the CAISO Tariff.
- (c) Seller shall keep a daily operations log for the Generating Facility that shall include information on availability, maintenance outages, circuit breaker trip operations requiring a manual reset, and any significant events related to the Operation of the Generating Facility, 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.

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

- (d) Seller shall keep a maintenance log for the Generating Facility that shall include information on electric energy production, fuel consumption and efficiency (if applicable), availability, maintenance (both breakdown and

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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.

- (e) Upon Notice from SCE, Seller shall promptly curtail the production of the Generating Facility. Such Notice shall be provided to Seller only in the event SCE, as Seller's Scheduling Coordinator, is instructed by the CAISO to curtail Seller's Generating Facility in order to respond to a CAISO Forecasted Over-Generation Condition, a CAISO Declared Over-Generation Condition or an Emergency.
- (f) Notwithstanding the foregoing, except as may be required in order to respond to any Emergency, SCE shall:
 - (i) Limit the duration of any curtailment order to a maximum of fifteen (15) consecutive hours;
 - (ii) Not issue more than one curtailment order during any twenty four (24) hour period; and
 - (iii) Limit the curtailment duration in any Term Year to a maximum of two hundred (200) hours.
- (g) Information maintained pursuant to this Section 3.11(d) 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.

3.12 Obtaining Scheduling Coordinator Services.

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

- (a) SCE as Scheduling Coordinator.
 - (i) At least thirty (30) days prior to Initial Operation of the Initial Facility, Seller shall take all actions and execute and deliver to SCE all documents necessary to authorize or designate SCE as Seller's Scheduling Coordinator throughout the Term of this Agreement.
 - (ii) Seller shall not authorize or designate any other party to act as Scheduling Coordinator, nor shall Seller perform, for its own benefit, the duties of Scheduling Coordinator.

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(b) Replacement of Scheduling Coordinator.

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

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

3.13 Forecasting.

Seller shall Forecast or cause to be Forecasted electric energy, in MWhs, in accordance with the provisions of Exhibit D.

3.14 Scheduled Outages.

- (a) No later than January 15th, April 15th, July 15th and October 15th of each year during the Term, and at least sixty (60) days prior to Initial Operation of the Initial Facility, Seller shall submit to SCE its schedule of proposed planned outages for the Generating Facility, including the Expansion, if applicable, ("Outage Schedule") for the subsequent twenty four-month period using an SCE-provided web-based system ("Web Client").
- (b) In the event the Web Client is unavailable, Seller shall provide SCE with the Outage Schedule by telephoning SCE's Generation Operations Center, at the telephone number(s) listed in Exhibit C.
- (c) Seller shall provide the following information for each proposed planned outage:
 - (i) Start date and time;
 - (ii) End date and time; and
 - (iii) Capacity online, in MW, during the planned outage.

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

3.15 Progress Reporting Toward Meeting Milestone Schedule.

Seller shall use commercially reasonable efforts to meet the Milestone Schedule for any Expansion 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 CAISO 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 for the Expansion.

3.16 Provision of Information.

Seller shall promptly provide to SCE copies of:

- (a) All agreements with providers of distribution, transmission or interconnection services for the Generating Facility and all amendments thereto, which may be

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redacted by Seller to eliminate any portions reasonably believed by Seller to contain confidential information;

- (b) All applications and approvals relating to CEC Certification and Verification and any Permits for the Initial Facility;
- (c) All applications and approvals relating to CEC Certification and Verification and any Permits for the Expansion;
- (d) All draft, preliminary, final and revised copies of reports, studies and analyses furnished by the CAISO, or any Transmission Provider, and any CAISO correspondence related thereto, concerning the transmission of electric energy from the Generating Facility to the Delivery Point;
- (e) All notifications of adjustments in the DLF 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;
- (f) Any reports, studies, or assessments done for it by an independent engineer.
- (g) At least thirty (30) days prior to Initial Operation of the Initial Facility, 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 each CAISO Approved Meter:

- (1) Generating Station/Unit ID;
- (2) CAISO Global Resource ID;
- (3) CAISO Approved Meter Device ID;
- (4) Password;
- (5) Data path (network (ECN) or modem);
- (6) If modem, phone number;
- (7) Copy of meter certification;
- (8) List of any CAISO metering exemptions (if any); and
- (9) Description of any compensation calculations such as transformer losses and line losses.

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For the Generating Facility:

- (1) Utility transmission/distribution one line diagram;
- (2) Physical location, address or descriptive identification;
- (3) Latitude and longitude;
- (4) Telephone number on site;
- (5) Telephone number of control room or mobile telephone number of on-site operator of the Generating Facility;
- (6) Telephone number for operational issues; and
- (7) Telephone number for administrative issues.

3.17 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.

3.18 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 for the Generating Facility including any Expansion throughout the Term.

3.19 Notice of Cessation or Termination of Service Agreements.

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

3.20 Lost Output Report.

(a) Monthly Report; SCE Review.

Commencing upon Initial Operation for the Initial Facility and continuing throughout the Term, Seller shall prepare and provide to SCE a Lost Output

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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 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/or arbitration as provided in Article Twelve.

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

(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.

3.21 CAISO Charges and CAISO Sanctions.

- (a) Commencing upon Initial Operation of the Initial Facility and continuing throughout the Term, Seller shall be responsible for all CAISO Charges incurred as a result of any Energy Deviations that exceed the Performance Tolerance Band (as defined in Exhibit O).

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- (b) Seller shall make payments for CAISO Charges, CAISO Sanctions and any in accordance with those provisions set forth in Exhibit O.
- (c) If Seller disputes any CAISO Charge or CAISO Sanction, Seller shall provide Notice of such dispute within five (5) Business Days of becoming aware of such CAISO Charge or CAISO Sanction.

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

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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 and Exhibit O.

SCE shall not be obligated to pay Seller under this Agreement for any electric energy prior to the commencement of the Term or any electric energy that is not or cannot be 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 SC Schedules ordered by the CAISO; or
- (d) A reduction or curtailment of SC 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.

4.03 Payment Statement and Payment.

- (a) 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 during which:
 - (i) Scheduled Amounts are provided to SCE;
 - (ii) CAISO Charges or CAISO Sanctions are incurred; or
 - (iii) Payment adjustments are made as set forth below;SCE shall do each of the following
 - (iv) 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) The CAISO Charges and CAISO Sanctions pursuant to Exhibit O, which will be available approximately one hundred twenty (120) days following the last day of a calendar month or thirty (30) days after the CAISO final settlement data is available to SCE, whichever is sooner; and
 - (4) A calculation of the net amount due Seller.

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- (v) 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 or CAISO Charges or CAISO Sanctions is incorrect as a result of inaccurate meters, the correction of data by the CAISO in OMAR, or a recalculation of CAISO Charges or CAISO Sanctions by the CAISO, SCE shall promptly recompute Metered Amounts, CAISO Charges or CAISO Sanctions for the period of the inaccuracy based upon an adjustment of inaccurate meter readings or recalculated CAISO Charges or CAISO Sanctions in accordance with the CAISO Tariff.

SCE shall also promptly recompute any payment affected by any meter or CAISO Charge or CAISO Sanction 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.

SCE may make payment adjustments arising from a recalculation of CAISO Charges or CAISO Sanctions or as a result of inaccurate meters after the end of the Term provided that the Parties shall be deemed to have waived any such payment adjustments which are not communicated as provided in this Section 4.03(b) within twenty eight (28) months from the end of the Term.

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.

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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;

provided, however, that if an error is identified by Seller as a result of settlement, audit or other information provided to Seller by SCE 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 from SCE 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 provided by the CAISO and not available to SCE when it rendered its original statement shall not bear interest.

In the event that the recomputation results in a net amount still owing to SCE after 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 in any subsequent monthly payment statement to Seller or invoice Seller for such

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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 the mediation and/or arbitration as provided in Article Twelve.

4.04 Scheduling Coordinator.

Commencing upon Initial Operation of the Initial Facility, SCE shall act as Scheduling Coordinator, on behalf of Seller, and shall submit bids and Schedules to the CAISO in accordance with CAISO Tariff protocols.

(a) Duties as Scheduling Coordinator.

- (i) SCE shall submit all notices and updates required under the CAISO Tariff regarding the Generating Facility's status to the CAISO.
- (ii) In the event SCE believes that any CAISO Charge or CAISO Sanction is incorrect and disputable under the CAISO Tariff or upon Notice by Seller of any dispute of a CAISO Charge or CAISO Sanction, SCE shall dispute any such CAISO Charge or CAISO Sanction in accordance with the procedures set forth under the CAISO Tariff.

(b) Termination of Scheduling Coordinator.

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

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

4.05 CAISO Charges.

Except as set forth in Section 3.21 and Exhibit O, SCE shall:

- (a) Be responsible for CAISO Charges; and
- (b) Receive all CAISO revenues (including credits and other payments) incurred or received as a result of providing Scheduling Coordinator services or

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attributable to generation from the Generating Facility, including costs and revenues associated with CAISO dispatches.

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:
 - (i) Agreement Deposit and Development Fee amounts posted in cash in the manner set forth in Section 3.05; and
 - (ii) The Performance Assurance posted in cash in the manner set forth in Section 8.02(a).

- (b) Upon receipt of a monthly invoice (provided by Seller to the SCE Manager of Credit and Collateral as set forth 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 (3rd) 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 received;

provided 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 additional Performance Assurance hereunder until the obligations of 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.

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5.03 On-Line Deadline and Startup Deadline Extension.

If Force Majeure occurs prior to the On-line Deadline which prevents Seller from achieving the On-line Deadline, *then* the On-line 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.

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 Extensions.

- (a) If Force Majeure occurs at any time after commencement of the Term, but prior to the Firm Operation Date for the Initial Facility, which prevents Seller from demonstrating the Contract Capacity for the Initial Facility as provided in Sections 3.05(e) or 3.05(g)(i),

then the Firm Operation Date for the Initial Facility 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.

- (b) If Force Majeure occurs at any time after the Expansion Election Date, but prior to the Firm Operation Date for the Expansion, which prevents Seller from demonstrating the Contract Capacity for the Expansion as provided in Sections 3.05(f) or 3.05(g)(ii),

then the Firm Operation Date for the Expansion 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.

- (a) Either Party may terminate the Expansion on Notice, which shall be effective five (5) Business Days after such Notice is provided, in the event of a Force Majeure affecting the Expansion which extends for more than three hundred sixty five (365) consecutive days.
- (b) 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 a Force Majeure affecting the Generating Facility including any Expansion which extends for more than three hundred sixty five (365) consecutive days.

*** End of ARTICLE FIVE ***

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ARTICLE SIX. EVENTS OF DEFAULT: REMEDIES6.01 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; *provided that*, if such misrepresentation or breach of warranty is not reasonably susceptible to being cured within the five (5) day cure period specified above, the breaching Party shall have such additional time (not exceeding an additional one hundred twenty (120) days) as is reasonably necessary to cure such misrepresentation or breach of warranty, so long as such breaching Party promptly commences and diligently pursues such cure; 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;

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

(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)

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- 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
 - (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;

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- (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.
- (c) With respect to Seller:
- (i) Seller fails to post and maintain the Agreement Deposit, pursuant to Section 3.05(a); and such failure is not cured within five (5) Business Days after Notice of such failure;
 - (ii) Seller fails to post and maintain the Development Fee, pursuant to Section 3.05(b); and such failure is not cured within five (5) Business Days after Notice of such failure;
 - (iii) Seller does not own the Initial Facility or otherwise have authority over the Initial Facility or, after electing to construct the Expansion as provided herein, Seller does not own or lease the Expansion or otherwise have authority over the Expansion;
 - (iv) Seller has not cured a failure with respect to Section 3.08(a) within the earlier of thirty (30) days after providing Notice in accordance with Section 3.08(b) or sixty (60) days after the occurrence of the event which results in such failure;
 - (v) 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;
 - (vi) 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 as may be increased pursuant to Section 1.01(d)(i), (an "Event of Excess Deliveries"), without the prior

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- 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 best efforts to ensure that no additional Events of Excess Deliveries will occur during the Term;
- (vii) Seller intentionally or knowingly Forecasts or delivers, or attempts to Forecast or deliver, 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 Forecasting and delivering where the Scheduled Amounts may exceed the Delivered Amounts in any hour as permitted by and subject to the CAISO Tariff;
 - (viii) 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;
 - (ix) The Generating Facility consists of an ERR type(s) different than that specified in Section 1.01(c);
 - (x) The Generating Facility fails to qualify as an ERR;
 - (xi) Any electric energy from the Generating Facility and sold or to be sold to SCE hereunder fails to qualify as output from an ERR;
 - (xii) The Generating Facility fails to qualify as a qualifying facility as required by Section 10.02(h);
 - (xiii) 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;
 - (xiv) 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 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;
 - (xv) 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

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- rejects, in whole or in part, or challenges the validity of, any of the Security Documents;
- (xvi) 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;
 - (xvii) 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;
 - (xviii) 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;
 - (xix) The stock or equity ownership interest in Seller has been pledged or assigned as collateral or otherwise to any party other than Lender; or
 - (xx) Seller fails to maintain its PGA and MSA during the Term.

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.

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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/or arbitration as provided in Article Twelve.

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

ARTICLE SEVEN. LIMITATIONS OF LIABILITIES

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

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

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

UNLESS EXPRESSLY 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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***** 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 (or unaudited, if audited reports are not produced by such party) 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 Performance Assurance.**(a) Posting Performance Assurance.**

- (i) On or before the commencement of the Term, Seller shall post Performance Assurance with SCE for the Initial Facility.

The Performance Assurance Amount for the Initial Facility due to SCE by Seller shall be calculated as set forth in Section 1.06.

The Performance Assurance Amount for the Initial Facility shall be posted to SCE at all times during the Term and thereafter until such time as Seller has satisfied all monetary obligations related to the Initial Facility which survive any termination of this Agreement, not to exceed one year following the end of the Term.

The Performance Assurance Amount shall be either in the form of cash or Letter of Credit acceptable to SCE;

provided that, on the commencement of the Term, if Seller has posted the Agreement Deposit in the form of cash or a Letter of Credit and SCE has not either returned the Agreement Deposit to Seller or given Seller Notice, pursuant to Exhibit L, of its determination regarding the disposition of the Agreement Deposit by such date,

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then Seller may withhold the portion of the Performance Assurance Amount equal to the Agreement Deposit or portion thereof held by SCE until three (3) Business Days following the later of Seller's receipt or forfeiture of the Agreement Deposit or any portion thereof pursuant to Section 3.05 and Exhibit L or Seller's receipt of Notice pursuant to Exhibit L, of the disposition of the Agreement Deposit.

In lieu of cash or a Letter of Credit, SCE may accept a Guaranty Agreement, in accordance with Section 8.02(c), from a Guarantor acceptable to SCE to satisfy the Seller's Performance Assurance obligation.

- (ii) On or before Initial Operation for the Expansion, Seller shall post additional Performance Assurance with SCE for the Expansion.

The Performance Assurance Amount for the Expansion due to SCE by Seller shall be calculated as set forth in Section 1.06.

The Performance Assurance Amount for the Expansion shall be posted to SCE at all times from Initial Operation of the Expansion through the Term and thereafter until such time as Seller has satisfied all monetary obligations related to the Expansion which survive any termination of this Agreement, not to exceed one year following the end of the Term.

The Performance Assurance Amount for the Expansion shall be either in the form of cash or Letter of Credit acceptable to SCE;

provided that, upon Initial Operation for the Expansion, if Seller has posted the Development Fee in the form of cash or a Letter of Credit and SCE has not either returned the Development Fee to Seller or given Seller Notice, pursuant to Exhibit L, of its determination regarding the disposition of the Development Fee by such date,

then Seller may withhold the portion of the Performance Assurance Amount equal to the Development Fee or portion thereof held by SCE until three (3) Business Days following the later of Seller's receipt or forfeiture of the Development Fee or any portion thereof pursuant to Section 3.05 and Exhibit L or Seller's receipt of Notice pursuant to Exhibit L, of the disposition of the Development Fee.

In lieu of cash or a Letter of Credit, SCE may accept a Guaranty Agreement, in accordance with Section 8.02(c), from a Guarantor acceptable to SCE to satisfy the Seller's Performance Assurance obligation for the Expansion.

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(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 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 Seller's

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obligations to SCE and SCE shall have the rights and remedies set forth in Section 8.03 with respect to such cash proceeds.

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

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

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.

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

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

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

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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.

8.04 Subordinated Security Interests and Mortgage.

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

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 8.04(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.

8.05 Credit and Collateral Covenants.

- (a) Seller shall, from time to time as requested by SCE, execute, acknowledge, record, register, deliver and/or file all such notices, statements, instruments and other documents as may be necessary or advisable to render fully valid

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- 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, and liens being disputed in good faith by Seller as provided for in this Section 8.05(d), 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;
 - (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
 - (h) During any period during which a Seller is a Defaulting Party, Seller shall:

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- (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 other than payments in the ordinary course of business with such Affiliate of Seller.

8.06 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, and all Permits and agreements necessary to install, interconnect and Operate the Generating Facility in the case of Seller, it has or will timely acquire all regulatory authorizations necessary for it to legally perform its obligations under this Agreement;
- (c) The execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or the like applicable to it;
- (d) This Agreement constitutes a legally valid and binding obligation enforceable against it in accordance with its terms, subject to any Equitable Defenses;
- (e) There is not pending, or to its knowledge, threatened against it or, in the case of Seller, any of its Affiliates, any legal proceedings that could materially adversely affect its ability to perform under 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;

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- (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; and
- (i) It shall act in good faith in its performance under this Agreement.

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 Initial Facility and, if it elects to construct the Expansion, it will own or lease and Operate the Expansion;
- (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 Permits;
- (g) It will maintain 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; and
- (h) The Generating Facility will meet all applicable qualifying facility requirements contained in FERC's rules (18 Code of Federal Regulations Section 292) implementing the Public Utility Regulatory Policies Act of 1978 (16 U.S.C.A. Sections 796, *et seq.*).
- (i) It has the rights to use, collect and purchase landfill gas for the Tajiguas Landfill located in Santa Barbara County, California by virtue of the Landfill Gas Lease, that the Landfill Gas Lease is currently in full force and effect, and that the term of the Landfill Gas Lease extends through and including at least March 10, 2018.

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10.03 Indemnity.

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

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

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

- (b) Each Party releases and shall defend, 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.

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

- (f) Each Party shall indemnify, defend and hold harmless the other Party against any Governmental Charges for which such Party is responsible under Article Nine.
- (g) Seller shall defend, save 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 or 3.02.
- (h) All indemnity rights shall survive the termination of this Agreement for twelve (12) months.

10.04 Assignment.

- (a) Except as provided in Section 10.05, 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

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- (i) The status of efforts by Seller or Lender to develop a plan to cure the Event of Default;
- (ii) Impediments to the cure plan or its development;
- (iii) If a cure plan has been adopted, the status of the cure plan's implementation (including any modifications to the plan as well as the expected timeframe within which any cure is expected to be implemented); and
- (iv) Any other information which SCE may reasonably require related to the development, implementation and timetable of the cure plan.

Seller or Lender shall provide the report to SCE within ten (10) 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 or if such Event of Default is not reasonably susceptible of cure within the cure period, Lender shall be given such additional time not to exceed an additional one hundred eighty (180) days (the "extended cure period") in order to remedy the Event of Default; *provided that*, if such Event of Default is not reasonably susceptible of cure within the extended cure period, and Lender is exercising reasonable diligence in curing the Event of Default Lender may be given additional time beyond the extended cure period as may be necessary in SCE's reasonable discretion to remedy or cure such Event of Default.
- (d) After the commencement of the Term, Lender shall have the right to consent prior to any termination of this Agreement by Seller and shall have the right to consent prior to any termination of the Agreement by SCE 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 but excluding possession or ownership through a lease entered into solely for purposes of providing financing to Seller for all or

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any part of the Generating Facility and during which time Seller continues to Operate the Generating Facility), Lender shall assume all of Seller's obligations arising under this Agreement,

provided that, Lender shall have no personal liability for any monetary obligations of Seller under this Agreement which:

- (i) Are due and owing to SCE as of the assumption date; or
- (ii) Arise following any assignment of this Agreement and the assumption of its obligations by an assignee from Lender consented to by SCE (which consent shall not be unreasonably withheld),

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:

- (iii) Cause such Event of Default to be cured, or
 - (iv) 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 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.

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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.

Notices (other than Forecasting and 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 an overnight mail or courier service shall be deemed given on the next Business Day after it was sent out; and

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- (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) Except as expressly set forth herein, this Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement).
- (e) Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default.
- (f) The term "including" when used in this Agreement shall be by way of example only and shall not be considered in any way to be in limitation.
- (g) The word "or" when used in this Agreement shall include the meaning "and/or" unless the context unambiguously dictates otherwise.
- (h) The headings used herein are for convenience and reference purposes only. Words having well-known technical or industry meanings shall have such meanings unless otherwise specifically defined herein.
- (i) Where days are not specifically designated as Business Days, they shall be considered as calendar days.

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- (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.
- (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.
- (p) This Agreement may be executed in multiple counterparts, each of which shall be deemed an original.

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, lessors, 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,

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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 CAISO 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) Disclosure of terms specified in and pursuant to Section 10.10(c);
- (vi) In order to comply with any Applicable Law or any exchange, control area or CAISO 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)(vii);
- (vii) 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;
- (viii) 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;
- (ix) To representatives of a Party's credit ratings agencies:
 - (1) Who have a need to review the terms and conditions of this Agreement for the purpose of assisting the Party in evaluating this Agreement for credit rating purposes; or
 - (2) With respect to the potential impact of this Agreement on the Party's financial reporting obligations.
- (x) In connection with discovery requests or orders pertaining to the non-public terms of this Agreement as referenced in Section 10.10(a)(vi) ("Disclosure Order") each Party shall, to the extent practicable, use reasonable efforts to:

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- (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.

Note: By checking this blank, Seller agrees to waive the right to notification under Section 10.10(a)(x)(1) above: ____.

(b) Non-Disclosure Agreement.

- (i) The Non-Disclosure Agreement between the Parties attached hereto as Exhibit J is incorporated herein (the "NDA"), and the termination date of that agreement is modified such that it will terminate on the later of:

- (1) 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 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.

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(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.

- (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.

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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 and/or conditions of service of this Agreement through application or complaint to FERC pursuant to the provisions of Section 205, 206 or 306 of the Federal Power Act, or any other provisions of the Federal Power Act, absent prior written agreement of the Parties.

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

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eligible to receive a Simple Interest Payment 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 CAISO 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/or 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

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/or 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:

MM TAJIGUAS ENERGY LLC,

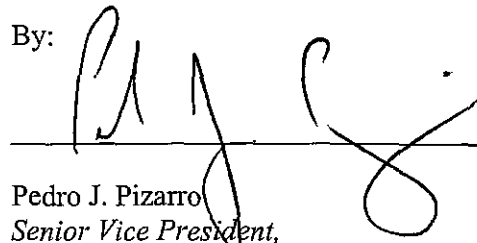
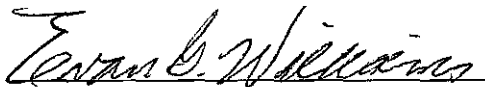
SOUTHERN CALIFORNIA EDISON COMPANY,

a Delaware limited liability company

a California corporation

By:

By:



Evan G. Williams
Authorized Agent

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

Date: November 14, 2006

Date: Nov. 15, 2006

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

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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. "Additional Generating Facilities" means any and all future electric energy generating facilities (which are not otherwise a part of the Generating Facility as of the Effective Date) and which are developed on the Site or which utilize landfill gas obtained by Seller pursuant to the Landfill Gas Lease or any agreement providing to Seller the right to purchase landfill gas collected from real property now subject to the Landfill Gas Lease.
2. "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.

3. "Agreement" has the meaning set forth in the Preamble.
4. "Agreement Deposit" has the meaning set forth in Section 3.05(a).
5. "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.
6. "Arbitrator" has the meaning set forth in Article Twelve.
7. "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.
8. "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;

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- 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.
9. "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.
10. "CAISO" 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 CAISO or its successor entity operational control of such facilities or entitlements.
11. "CAISO Approved Meter" has the meaning set forth in Section 3.06.
12. "CAISO Charges" means the debits, costs, penalties and interest that are directly assigned by the CAISO to the CAISO Global Resource ID for the Generating Facility for, or attributable to, scheduling or deliveries from the Generating Facility under this Agreement.
13. "CAISO Declared Over-Generation Condition" means a CAISO declared condition on the CAISO Grid where the sum of the desired generation output of all of the Scheduling Coordinators in the Control Area, absent mitigation, would be greater than the system load.
14. "CAISO Forecasted Over-Generation Condition" means a CAISO forecasted condition on the CAISO Grid where the sum of the desired generation output of all of the Scheduling Coordinators in the Control Area, absent mitigation, would be greater than the system load.
15. "CAISO Global Resource ID" or "GRI" means the number or name assigned by the CAISO to the CAISO Approved Meter.

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16. "CAISO Grid" means the system of transmission lines and associated facilities and entitlements of the participating transmission owners that have been placed under the CAISO's operational control.
17. "CAISO Sanctions" means any sanction directly assigned by the CAISO to the CAISO Global Resource ID for the Generating Facility, or attributable to, scheduling or deliveries from the Generating Facility under this Agreement.
18. "CAISO 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.
19. "Capacity Attributes" means any and all current or future defined characteristics, certificates, tags, 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.
20. "CEC" means the California Energy Commission.
21. "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.
22. "Change in CAISO Tariff" means that the CAISO Tariff has been changed and such change has a material impact on either Party, or the CAISO has been dissolved or replaced and any successor to the CAISO operates under rules, protocols, procedures or standards that differ in a material respect from the CAISO Tariff, after the Effective Date.
23. "Claiming Party" has the meaning set forth in Section 5.02.
24. "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.
25. "Collateral Assignment Agreement" has the meaning set forth in Section 10.05.

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26. "Contract Capacity" means the electric energy generating capacity, set forth in Section 1.01(d), that Seller commits to install at the Site as may be adjusted pursuant to Section 1.01(d)(i) and that is subject to reduction as set forth in Section 1.01(d)(ii) and Section 3.05(g).
27. "Control Area" means the electric power system (or combination of electric power systems) under the operational control of the CAISO or any other electric power system under the operational control of another organization vested with authority comparable to that of the CAISO.
28. "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.
29. "CPUC" means the California Public Utilities Commission.
30. "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.
31. "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.

32. "Cross Default Amount" means the dollar amount set forth in Section 1.07(c).
33. "Daily Delay Liquidated Damages" has the meaning set forth in Section 3.05(d).
34. "Defaulting Party" has the meaning set forth in Section 6.01.
35. "Delivered Amounts" means the Metered Amounts adjusted by Delivery Losses.
36. "Delivery Losses" means all electric energy losses occurring between the CAISO Approved Meter and the Delivery Point and electric energy losses occurring over the CAISO Grid as such losses are assigned by the CAISO to the Generating Facility or any Additional Generating Facilities including if applicable, but not limited to:
 - a) If the CAISO Approved Meter is not installed on the high voltage side of the Generating Facility's or any Additional Generating Facilities' substation bus bar(s), transformer and other electric energy losses occurring between the CAISO Approved Meter and the high voltage side of the Generating Facility's or any Additional Generating Facilities' substation bus bar(s);
 - b) Any applicable DLF, or if no DLF is applicable, *then* electric energy losses between the high voltage side of the Generating Facility's or any Additional Generating Facilities' substation bus bar(s) and the CAISO Grid; and
 - c) Electric energy losses determined by utilizing the GMM assigned to the Generating Facility or any Additional Generating Facilities.
37. "Delivery Point" means CAISO Zone SP-15.

Notwithstanding anything to the contrary in Article Eleven, after a Change in CAISO Tariff that impacts the trading points or trading rules thereof in CAISO 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 CAISO; or
 - b) If an SCE load aggregation point is not defined by the CAISO, the CAISO-defined trading hub designated by SCE as most closely representing SCE's bundled customer load.
38. "Demonstrated Contract Capacity for the Expansion" has the meaning set forth in Section 3.05(g).

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39. "Demonstrated Contract Capacity for the Initial Facility" has the meaning set forth in Section 3.05(g).
40. "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.
41. "Development Fee" means the fee described in Section 3.05(b).
42. "Disclosing Party" has the meaning set forth in Section 10.10.
43. "Disclosure Order" has the meaning set forth in Section 10.10.
44. "Dispute" has the meaning set forth in Article Twelve.
45. "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.
46. "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 CAISO Grid, also known as the distribution loss factor.
47. "Early Termination Date" has the meaning set forth in Section 6.02.
48. "Effective Date" has the meaning set forth in the Preamble.
49. "Emergency" means:
- a) An actual or imminent condition or situation which jeopardizes SCE Electric System Integrity or the integrity of any other systems to which SCE is connected, as determined by SCE in its reasonable discretion, or any condition so defined and declared by the CAISO; 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.

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50. "Energy Deviations" means the absolute value of the difference, in kWh, in any Settlement Interval between:
- a) The Final Hour-Ahead Schedule for the hour of the Settlement Interval divided by the number of Settlement Intervals in the hour; and
 - b) Delivered Amounts for the Settlement Interval.
51. "Energy Forecast(s)" means the data containing Seller's expected Metered Amounts and submitted in accordance with Exhibit D.
52. "Energy Payment" has the meaning set forth in Section 4.02(a).
53. "Energy Payment Allocation Factor" has the meaning set forth in Exhibit K.
54. "Energy Price" means the energy price set forth in Section 1.05.
55. "Energy Replacement Damage Amount" has the meaning set forth in Section 3.06(b).
56. "Environmental Attributes" mean any and all current or future credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributed to the generation from the Generating Facility and its displacement of conventional energy generation. Environmental Attributes include but are not limited to:
- a) Any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SO_x), nitrogen oxides (NO_x), carbon monoxide (CO) and other pollutants;
 - b) Any avoided emissions of carbon dioxide (CO₂), methane (CH₄) and other greenhouse gases (GHGs) that have been determined by any applicable governmental body or association of governmental representatives, such as, but not limited to, the United Nations Intergovernmental Panel on Climate 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.

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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
 - g) Emission reduction credits encumbered or used by the Generating Facility for compliance with local, state, or federal operating and/or air quality permits.
57. “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.
58. “ERR” means a generating facility that qualifies as an eligible renewable electric energy resource for purposes of the RPS Legislation.
59. “Event of Default” has the meaning set forth in Section 6.01.
60. “Event of Deficient Energy Deliveries” has the meaning set forth in Section 3.06(a)(ii).
61. “Event of Excess Deliveries” has the meaning set forth in Section 6.01(c)(vi).
62. “Expansion” shall mean up to 1.5 MW of new Contract Capacity to the Generating Facility as will be described in Exhibit B which Seller may elect to add to the Generating Facility pursuant to Section 1.01(d)(i).
63. “Expansion Election Date” has the meaning set forth in Section 1.01(d)(i)(1).
64. “Expected Annual Net Energy Production” means the Generating Facility’s expected annual Metered Amounts set forth in Section 1.01(e).
65. “Extraordinary SCE Force Majeure” means a Force Majeure as to which SCE is the Claiming Party that results in SCE not accepting electric energy for more than ten (10) consecutive days during which Seller was prepared and able to deliver the Scheduled Amounts at the Delivery Point.

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66. "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.
67. "FERC" means the Federal Energy Regulatory Commission.
68. "Final Hour-Ahead Schedule" has the meaning as set forth in the CAISO Tariff.
69. "Final Schedule" has the meaning as set forth in the CAISO Tariff.
70. "Firm Operation Date for the Expansion" has the meaning set forth in Section 1.03(b).
71. "Firm Operation Date for the Initial Facility" has the meaning set forth in Section 1.03(a).
72. "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 control of that Party; and
 - c) The Party has been unable to overcome by the exercise of due diligence.

Subject to the above, Force Majeure may include:

- d) An act of God, flood, drought, earthquake, storm, fire, pestilence, lightning and other natural catastrophes, epidemic, war, riot, civil disturbance or disobedience, terrorism, sabotage, strike or labor dispute, or actions or inactions of any Governmental Authority, or curtailment or reduction in deliveries at the direction of a Transmission Provider or the CAISO except as set forth below:
 - i) A reduction or interruption in the supply of landfill gas to the Generating Facility, which is not caused or substantially contributed to by Seller;
 - ii) Any change in the Applicable Laws occurring after the Effective Date which mandates a material reduction in the operating hours of the Generating Facility or materially increases the capital investment in or operating costs of the Generating Facility.

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

The term "material" for purposes of this definition of Force Majeure, means, for:

- (x) Reduction in operating hours, a ten percent (10%) reduction in the electric energy delivered in any Term Year;
- (y) Capital investment, a one time investment amount in excess of one hundred thousand dollars (\$100,000); or
- (z) Operating costs, an ongoing operating expense in excess of twenty five thousand (\$25,000) per year.

Force Majeure does not include:

- e) The lack of wind, sun or other fuel source of an inherently intermittent nature; nor
 - f) Curtailment or reduction in deliveries at the direction of a Transmission Provider or the CAISO when the basis of the curtailment or reduction in deliveries ordered by a Transmission Provider or the CAISO is congestion arising in the ordinary course of operations of the Transmission Provider's system or the CAISO Grid, including congestion caused by outages or capacity reductions for maintenance, construction or repair.
73. "Forecast" or "Forecasting" means the action of Seller in preparing and submitting the Energy Forecast(s) to SCE in accordance with Exhibit D.
74. "Forecast Update" has the meaning set forth in Exhibit D.
75. "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.
- The Forward Settlement Amount shall not include consequential, incidental, punitive, exemplary or indirect or business interruption damages.
76. "GAAP" means generally accepted accounting principles.
77. "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, 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.

78. "Generating Facility" means Seller's electric generating facility or generating facilities as more particularly described in Exhibit B, including the Initial Facility and the Expansion if applicable, together with all materials, equipment systems, structures, features and improvements necessary to produce electric energy at such generating facility or generating facilities including the replacement of such generating facility or generating facilities or materials, equipment systems, structures, features and improvements, excluding the Site, land rights and interests in land.
79. "GMM(s)" means the generation meter multipliers as determined by the CAISO 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 CAISO Grid, which values are, as of the Effective Date, posted by the CAISO on its website. The values used in this Agreement shall be those appearing on the CAISO website on the third (3rd) Business Day of the calendar month following the month for which such values are being applied.
80. "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.
81. "Governmental Charges" has the meaning as set forth in Section 9.02.

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

82. "Guarantor" has the meaning set forth in Section 1.07.
83. "Guaranty Agreement" means, if a Guarantor has been identified, the guaranty agreement from the Guarantor in the form attached hereto as Exhibit I.
84. "Initial Facility" means the generating facility described in Exhibit B and any replacement of such generating facility during the Term of this Agreement.
85. "Initial Operation for the Expansion" has the meaning set forth in Section 2.03(b)(ii).
86. "Initial Operation for the Initial Facility" has the meaning set forth in Section 2.03(b)(i).
87. "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.*
88. "kW" means a kilowatt of electric energy generating capacity or power output.
89. "kWh" means a kilowatt-hour of electric energy.
90. "Landfill Gas Lease" means the Landfill Gas Lease dated March 10, 1998 between the County of Santa Barbara and NEO Tajiguas LLC, as amended and restated from time to time.
91. "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.
92. "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.
93. "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.

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94. "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.

95. "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.
96. "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 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.

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

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.

97. "Lost Output" means the sum of the Metered Amounts over the relevant measurement period that the Generating Facility was available to produce and could reasonably have been expected to deliver, based upon 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 CAISO, or SCE acting as a Transmission Provider; *provided that*, the basis of such curtailment or reduction is not an event caused by Seller.
98. "Lost Output Report" means the report of Lost Output prepared in accordance with the procedures set forth in Section 3.20 and Exhibit M.
99. "Lost Output Workbook" has the meaning set forth in Exhibit M.
100. "Market Price" means the CAISO Real-Time Price for uninstructed deviations or any successor price for short term imbalance electric energy, as such price or successor price is defined in the CAISO Tariff Appendix A, that would apply to the Generating Facility, which values are, as of the Effective Date, posted by the CAISO on its website.
- The values used in this Agreement will be those appearing on the CAISO website on the third (3rd) Business Day of the calendar month following the month for which such prices are being applied.
101. "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).
102. "Master File" has the meaning set forth in the CAISO Tariff.
103. "Mediator" has the meaning set forth in Article Twelve.
104. "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 CAISO Approved Meter.

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105. "Meter Service Agreement" has the meaning set forth in the CAISO Tariff.
106. "Milestone Schedule" means Seller's schedule to develop the Expansion as set forth in Exhibit G, including any revisions thereto in accordance with this Agreement.
107. "Moody's" means Moody's Investor Services, Inc.
108. "MW" means a megawatt (or 1,000 kilowatts) of electric energy generating capacity or power output.
109. "MWh" means a megawatt-hour (or 1,000 kilowatt-hours) of electric energy.
110. "Non-Defaulting Party" has the meaning set forth in Section 6.02.
111. "Notice" means notices, requests, statements or payments provided in accordance with Section 10.08 and Exhibit C.
112. "OMAR" means the Operational Metering Analysis and Reporting System operated and maintained by the CAISO as the repository of settlement quality meter data or its successor.
113. "On-line Deadline" means the date set forth in Section 1.02(a) by which Seller must have achieved Initial Operation of the Initial Facility as set forth in Section 2.03 subject to extension as provided in this Agreement.
114. "Operate," "Operating" or "Operation" means to provide (or 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.
115. "Outage Schedule" has the meaning set forth in Section 3.14.
116. "Participating Generator Agreement" has the meaning set forth in the CAISO Tariff.
117. "Party" or "Parties" have the meaning set forth in the Preamble.
118. "Performance Assurance" means collateral in the amount set forth in Section 1.06 for Seller's performance during the Term in the form of either cash, Letter(s) of Credit, or other security acceptable to SCE.
119. "Performance Assurance Amount" has the meaning set forth in Section 1.06.
120. "Performance Tolerance Band" has the meaning set forth in Exhibit O.

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121. "Permits" means all applications, approvals, authorizations, consents, filings, licenses, orders, permits or similar requirements imposed by any Governmental Authority, or the CAISO, in order to develop, construct, operate, maintain, improve, refurbish and retire the Generating Facility including any Expansion or to Forecast or deliver the electric energy produced by the Generating Facility including any Expansion to SCE, including the Authority to Construct permit.
122. "Product" means:
- a) All electric energy produced by the Generating Facility or any Additional Generating Facilities, net of Station Use and Delivery Losses; and
 - b) All associated Environmental Attributes, Capacity Attributes, and Resource Adequacy Benefits.
123. "Prudent Electrical Practices" means those practices, methods and acts that would be implemented 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 requirements of Governmental Authorities, WECC standards, the CAISO 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;

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- d) Appropriate monitoring and testing are performed to ensure equipment is functioning as designed;
 - e) Equipment is not operated in a reckless manner, in violation of manufacturer's guidelines or in a manner unsafe to workers, the general public, or the Transmission Provider's electric system or contrary to environmental laws, permits or regulations or without regard to defined limitations such as, flood conditions, safety inspection requirements, operating voltage, current, volt ampere reactive (VAR) loading, frequency, rotational speed, polarity, synchronization, and/or control system limits; and
 - f) Equipment and components 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.
124. "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.
125. "Resource Adequacy Rulings" means CPUC Decisions 04-01-050, 04-10-035 and any subsequent CPUC ruling or decision, or any other resource adequacy laws, rules or regulations enacted, adopted or promulgated by any applicable Governmental Authority, as such Decisions, rulings, laws, rules or regulations may be amended or modified from time-to-time during the Term.
126. "RPS Legislation" means the State of California Renewable Portfolio Standard Program, as codified at California Public Utilities Code Section 399.11, *et seq.*
127. "S&P" means the Standard & Poor's Rating Group.
128. "SC Schedules" means the amounts initially submitted to the CAISO by SCE, as Scheduling Coordinator for Seller, of the amount of expected electric energy that Seller expects to deliver to SCE in each hour.
129. "SCE" has the meaning set forth in the Preamble.
130. "Schedule," "Scheduled" or "Scheduling" means the action of SCE in submitting the SC Schedules to the CAISO and receiving the Final Schedules from the CAISO.
131. "Scheduled Amounts" means the quantity, expressed in kWh, of the electric energy Seller is delivering from the Generating Facility to SCE at the Delivery Point, in the

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form of Final Hour-Ahead Schedules, on any given day, hour, or relevant Settlement Interval at the Delivery Point.

132. "Scheduling Coordinator" or "SC" means an entity certified by the CAISO for the purposes of undertaking the functions specified by CAISO Tariff Section 2.2.6, as amended by FERC from time-to-time.
133. "Secured Interest" has the meaning set forth in Section 8.04(a).
134. "Security Documents" has the meaning set forth in Section 8.04(a).
135. "Security Interests" has the meaning set forth in Section 8.03.
136. "Selected Date for the Expansion" has the meaning set forth in Section 2.03(b)(ii).
137. "Selected Date for the Initial Facility" has the meaning set forth in Section 2.03(b)(i).
138. "Seller" has the meaning set forth in the Preamble.
139. "Seller's Annual Energy Delivery Obligation" has the meaning set forth in Section 3.06(a).
140. "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;

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- 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 regard 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, 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

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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).

141. "Seller's Debt to Equity Ratio" means the ratio of Seller's Debt to Seller's Equity.
142. "Seller's Equity" means the aggregate net equity of Seller as set forth on its balance sheet prepared in accordance with GAAP.
143. "Settlement Interval" means any one of the six, ten (10) minute time intervals beginning on any hour and ending on the next hour (e.g. 12:00 to 12:10, 12:10 to 12:20, etc.).
144. "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.
145. "Site" means the parcel or parcels of real property subject to the Site Lease on which the Generating Facility and any Additional Generating Facilities are or may be located.
146. "Site Control" means that Seller satisfies the criteria of Section 3.08(a).
147. "Site Lease" means either (i) the Sublease dated June 30, 1998 between NEO Tajiguas LLC, as sublessor (and lessee under the Landfill Gas Lease), (the "Sublease") and MM Tajiguas Energy LLC, as sublessee, with respect to the parcel of real property on which the Generating Facility is located as of the Effective Date, and any expansions or additions thereto and that is within the real property subject to the Landfill Gas Lease, as it may be amended from time to time, or (ii) if the Landfill Gas Lease is terminated by mutual agreement between the County of Santa Barbara and NEO Tajiguas LLC in conjunction with the signing of a new agreement between the County of Santa Barbara and MM Tajiguas Energy LLC providing to MM Tajiguas Energy LLC the exclusive right to purchase and use in the Generating Facility and any Additional Generating Facilities all landfill gas collected at the Tajiguas Landfill (described in the Landfill Gas Lease together with additional, contiguous real property that is being used as a sanitary landfill by the County of Santa Barbara), any lease that is entered into between the County of Santa Barbara and MM Tajiguas

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Energy LLC, or its successors in interest, with respect to the property that is the subject of the Sublease.

148. "Startup Deadline" means the date set forth in Section 1.02(b) by which Seller must have achieved Initial Operation of the Expansion as set forth in Section 2.03, subject to extension as provided in this Agreement.
149. "Station Use" means the electric energy produced by the Generating Facility or any Additional Generating Facilities 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.
150. "Supplemental Lost Output" has the meaning set forth in Section 3.20.
151. "Supplemental Lost Output Report" has the meaning set forth in Section 3.20.
152. "Term" has the meaning used in Section 1.04.
153. "Term Year" means a twelve (12) month period beginning on the first day of the calendar month following the Firm Operation Date for the Initial Facility, and each successive twelve (12) month period thereafter.
154. "Termination Payment" has the meaning set forth in Section 6.03.
155. "TOD Period(s)" means the time of delivery period(s) set forth in Exhibit K.
156. "TOD Period Energy Payment" has the meaning set forth in Section 4.02(a).
157. "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.
158. "Unincluded Capacity for the Expansion" has the meaning set forth in Section 3.05(g).
159. "Unincluded Capacity for the Initial Facility" has the meaning set forth in Section 3.05(g).
160. "Web Client" shall have the meaning set forth in Section 3.14.

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161. "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

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EXHIBIT B

Generating Facility And Site Description

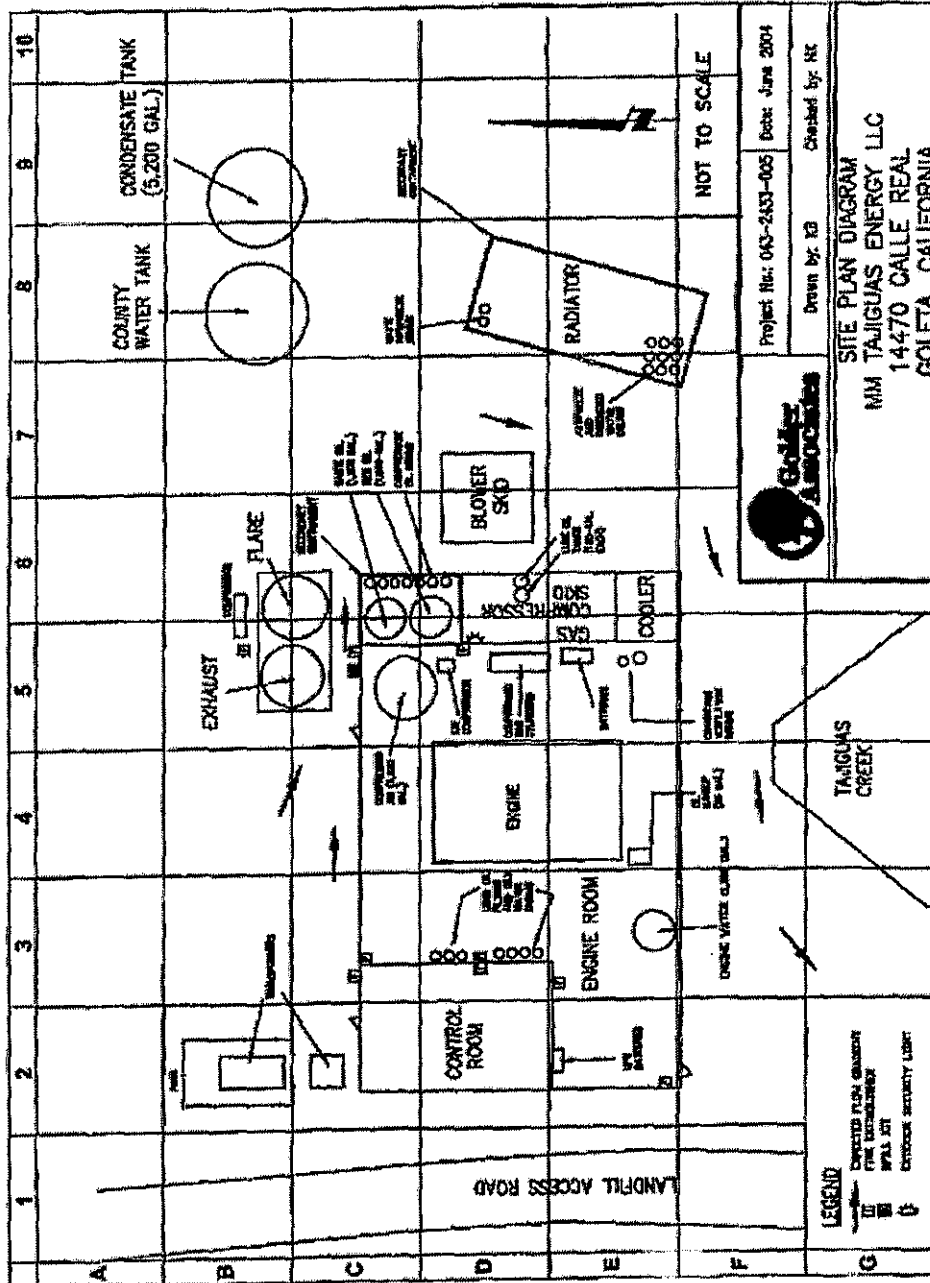
1. Initial Facility Description.

The Generating Facility is located on a site within the Tajiguas Landfill owned by the County of Santa Barbara. The site is currently developed with a Caterpillar 3616 engine rated at 3,050 kW.

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2. Initial Site Description.

Site Map:



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

Aerial Photograph:



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Legal Description:

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

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EXHIBIT C

Notice List

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

EXHIBIT C

Notice List

| | |
|---|---|
| MM TAJIGUAS ENERGY LLC ("Seller") | SOUTHERN CALIFORNIA EDISON COMPANY ("SCE") |
| All Notices are deemed provided in accordance with Section 10.08 if made to the address and/or facsimile number provided below: | Unless otherwise specified, all Notices are deemed provided in accordance with Section 10.08 if made to the Contract Sponsor at the address and/or facsimile number provided below: |
| Contract Sponsor: Attn: Division Manager; Alternative Fuels Street: 2845 Bristol Circle City: Oakville, Ontario, CANADA L6H 7H7 Phone: (905) 465-4537 Facsimile: (905) 465-4514 | 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 |
| Reference Numbers: Duns: Federal Tax ID Number: 41-1901628 | Reference Numbers: Duns: 006900818 Federal Tax ID Number: 95-1240335 |
| Contract Administration: Attn: Chris Forbell Phone: (905) 465-4509 Facsimile: (905) 465-4514 | Contract Administration: Attn: Michele Walker Phone: (626) 302-8908 Facsimile: (626) 302-1102 Email: michele.walker@sce.com |
| Forecasting: Attn: Control Room Phone: (562) 424-5830 Facsimile: (562) 424-5834 | Generation Operations Center: Phone: (626) 307-4453 or Backup: (626) 307-4410 |

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Southern California Edison

Confidential Information

QFID# 1210, MM Tajiguas Energy LLC

| | |
|--|---|
| MM TAJIGUAS ENERGY LLC ("Seller") | SOUTHERN CALIFORNIA EDISON COMPANY ("SCE") |
| Day Ahead Forecasting: Phone: (562) 424-5830 Facsimile: (562) 424-5834 | 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 Forecasting: Phone: (562) 424-5830 Facsimile: (562) 424-5834 | 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: (562) 424-5830 | |
| Payment Statements: Attn: Jamal Khan Phone: (905) 465-4527 Facsimile: (905) 465-4514 | Payment Statements: Attn: Selene Willis Phone: (626) 302-3329 Facsimile: (626) 302-3276 Email: ContractSettlements@SCE.com |
| CAISO Charges and CAISO Sanctions: Attn: Janet Yeung Phone: (905) 465-4504 Facsimile: (905) 465-4514 | CAISO Charges and CAISO Sanctions: Attn: Selene Willis Phone: (626) 302-3329 Facsimile: (626) 302-3276 Email: ContractSettlements@SCE.com |

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Southern California Edison

Confidential Information

QFID# 1210, MM Tajiguas Energy LLC

| | |
|--|--|
| MM TAJIGUAS ENERGY LLC ("Seller") | SOUTHERN CALIFORNIA EDISON COMPANY ("SCE") |
| Payments: Attn: Janet Yeung Phone: (905) 465-4504 Facsimile: (905) 465-4514 | Payments: Attn: Selene Willis Phone: (626) 302-3329 Facsimile: (626) 302-3276 Email: ContractSettlements@SCE.com |
| Wire Transfer: BNK: JP Morgan Chase ABA: 071000013 ACCT: 658543582 | Wire Transfer: BNK: JP Morgan Chase Bank ABA: 02100002 ACCT: 323-394434 |
| Credit and Collections: Attn: Jamal Khan Phone: (905) 465-4527 Facsimile: (905) 465-4514 | Manager of Credit and Collateral: Attn: Manager of Credit Phone: (626) 302-1129 Facsimile: (626) 302-2517 |
| With additional Notices of an Event of Default or Potential Event of Default to: Attn: Division Manager; Alternative Fuels Phone: (905) 465-4537 Facsimile: (905) 465-4514 | With additional Notices of an Event of Default or Potential Event of Default to: Attn: Manager SCE Law Department Power Procurement Section Phone: (626) 302-1212 Facsimile: (626) 302-1904 |
| Guarantor: Attn: Algonquin Power Income Fund Phone: (905) 465-4500 Facsimile: (905) 465-4540 | |
| Lender: Attn: Phone: Facsimile: | |

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Southern California Edison

Confidential Information

QFID# 1210, MM Tajiguas Energy LLC

| | |
|-----------------------------------|--|
| MM TAJIGUAS ENERGY LLC ("Seller") | SOUTHERN CALIFORNIA EDISON COMPANY ("SCE") |
| | QF Efficiency Data: Attn: Renewable and Alternative Power Department QF Efficiency Monitor Phone: (626) 302-9110 Facsimile: (626) 302-9116 Email: QFem@SCE.com |

**** End of EXHIBIT C ****

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

EXHIBIT D

Forecasting and Scheduling Requirements and Procedures

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

EXHIBIT D

Forecasting and Scheduling Requirements and Procedures

1. Introduction.

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

- (a) Comply with CAISO 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 CAISO, including but not limited to, automated forecast and outage submissions.

2. Seller's Forecasting Requirements.

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

- (a) No later than thirty (30) days prior to Initial Operation of the Initial Facility, Seller shall provide SCE with an electronic file containing a non-binding rolling 30-day, hourly Energy Forecast, in MWh, for the thirty day (30) period commencing on Initial Operation of the Initial Facility.

Seller shall prepare the electronic files in a format similar to that shown in Attachment D-1.

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

The Energy Forecast for any given hour becomes binding at 5:30 am PPT on the day prior to the day in which such hour occurs, unless the Energy Forecast is updated pursuant to Items 2.(c) or 2.(d) below.

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- (b) The Energy Forecast, and any updated Energy Forecasts provided pursuant to this Section 2, shall:
- (i) Not include any anticipated or expected electric energy losses between the CAISO Approved Meter and the Delivery Point; and
 - (ii) Limit hour-to-hour forecast changes to no less than one hundred (100) kWh during any period when Seller is submitting electronic files. Otherwise, Seller shall have no restriction on hour-to-hour forecast changes when the Web Client is available.
- (c) Commencing on or before 5:00 p.m. PPT of the Wednesday prior to the first week covered by the Energy Forecast provided pursuant to Section 2(a) above and on or before 5:00 p.m. PPT every Wednesday thereafter until the end of the Term, Seller shall update the Energy Forecast for the thirty (30) day period commencing on the Sunday following the weekly Wednesday Energy Forecast update submission. Seller shall use the Web Client, if available, to supply this weekly update or, if the Web Client is not available Seller shall provide SCE with the weekly Energy Forecast update by telephoning SCE's Generation Operations Center, at the telephone number(s) listed in Exhibit C .

The Energy Forecast for any given hour becomes binding at 5:30 am PPT on the day prior to the day in which such hour occurs, unless the Energy Forecast is updated pursuant to Item 2.(d) below.

- (d) If Seller learns of any change in the total generation capacity of the Generating Facility, other than transitory changes, for a period covered by the most recent Energy Forecast update resulting from any cause, including, but not limited to, an unplanned outage, prior to the time that the next weekly update of the Energy Forecast is due which results in variance in expected energy in any hour of plus (+) or minus (-) three percent (3%) from the energy reported in the most recent Energy Forecast update, Seller shall provide an updated Energy Forecast to SCE. This updated Energy Forecast must be submitted to SCE by no later than:
- (i) 5:30 am PPT on the day prior to any day impacted by the change, if the change is known to Seller at that time;
 - (ii) Thirty (30) minutes before the commencement of any hour impacted by the change, if the change is known to Seller at that time; or
 - (iii) If the change is not known to Seller by the timeframes indicated in (i) or (ii) above, no later than twenty (20) minutes after the

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commencement of the event which caused the available capacity change.

Seller's updated Energy Forecast must contain the following information:

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

3. SCE's Scheduling Responsibilities.

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

- (a) Adjust the Energy Forecasts, or the last Energy Forecast update submitted to SCE pursuant to Section 2 above, for forecasted electric energy line losses to reflect Seller's self-provision of those losses and the amount of electric energy Seller expects to deliver to the Delivery Point in any given hour;
- (b) Submit the adjusted Energy Forecasts to the CAISO as SC Schedules.
- (c) Receive notification of the Final Schedules from the CAISO.

4. 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 CAISO's Scheduled and Forced Outage Procedure T-113 as posted on the CAISO's website.

Appendix D-1

File Format for Thirty Day Forecast

| | HE1 | HE2 | HE3 | HE4 | HE5 | HE6 | HE7 | HE8 | HE9 | HE10 | HE11 | HE12 | HE13 | HE14 | HE15 | HE16 | HE17 | HE18 | HE19 | HE20 | HE21 | HE22 | HE23 | HE24 | HE25 | |
|---|-----|-----|-----|-----|-----|-----|-----|-----|-----|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|--|
| 1/1/2007 Monday | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 1/2/2007 Tuesday | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 1/3/2007 Wednesday | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 1/4/2007 Thursday | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 1/5/2007 Friday | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 1/6/2007 Saturday | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 1/7/2007 Sunday | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 1/8/2007 Monday | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 1/9/2007 Tuesday | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 1/10/2007 Wednesday | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 1/11/2007 Thursday | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 1/12/2007 Friday | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 1/13/2007 Saturday | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 1/14/2007 Sunday | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 1/15/2007 Monday | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 1/16/2007 Tuesday | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 1/17/2007 Wednesday | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 1/18/2007 Thursday | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 1/19/2007 Friday | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 1/20/2007 Saturday | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 1/21/2007 Sunday | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 1/22/2007 Monday | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 1/23/2007 Tuesday | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 1/24/2007 Wednesday | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 1/25/2007 Thursday | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 1/26/2007 Friday | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 1/27/2007 Saturday | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 1/28/2007 Sunday | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 1/29/2007 Monday | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 1/30/2007 Tuesday | | | | | | | | | | | | | | | | | | | | | | | | | | |
| (Schedule in Attachment) | | | | | | | | | | | | | | | | | | | | | | | | | | |
| CONTACTS: | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Tajiguas Landfill Primary Contact: | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Phone: 875-3301 | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Email: rajiguas@sc Edison.com | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Tajiguas Landfill Backup Contact: | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Phone: 875-3301 | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Email: rajiguas@sc Edison.com | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Tajiguas Landfill Dump Contact: | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Phone: 875-3301 | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Email: rajiguas@sc Edison.com | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Tajiguas Landfill Primary Contact: | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Phone: 875-3301 | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Email: rajiguas@sc Edison.com | | | | | | | | | | | | | | | | | | | | | | | | | | |

*** End of EXHIBIT D ***

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

EXHIBIT E

This exhibit intentionally deleted.

**** 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 3.06, 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 for Expansion

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

EXHIBIT G*Seller's Milestone Schedule for Expansion*

| <i>No.</i> | <i>Date</i> | <i>Milestones</i> |
|------------|-------------|--|
| 1 | | Submits interconnection application. |
| 2 | | Files any land applications. |
| 3 | | Files Permit application(s). |
| 4 | | Files a CEC Certification and Verification application. |
| 5 | | Receives a completed System Impact Study. |
| 6 | | Obtains control of all lands and rights-of-way comprising the Site. |
| 7 | | Receives a completed interconnection Facility Study. |
| 8 | | Executes a Transmission Owner Tariff and / or applicable service agreement. |
| 9 | | Receives FERC acceptance of Interconnection Agreement and transmission agreement(s). |
| 10 | | Receives all Permit(s). |
| 11 | | Receives CEC Certification and Verification. |
| 12 | | Executes an Engineering, Procurement and Construction ("EPC") contract. |
| 13 | | Completes Financing. |
| 14 | | Begins construction of the Expansion. |
| 15 | | Begins startup activities. |
| 16 | | Achieves Initial Operation of the Expansion. |
| 17 | | Demonstrates the Contract Capacity of the Expansion. |

***** 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 Expansion 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 Development Fee.

Each Milestone Progress Report shall include the following items:

1. Cover page.
2. Brief Generating Facility description.
3. Site plan of the Generation Facility.
4. Description of any planned changes to the Generating Facility and Site Description in Exhibit 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.

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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.

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

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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, Algonquin Power Income Fund, a mutual fund trust established under the laws of the Province of Ontario, Canada (“**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 MM Tajiguas Energy LLC, a Delaware limit liability company (“**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 \$1,511,000 in the aggregate, which amount shall include all interest that has accrued on any amount owed hereunder.

3. Guaranty Absolute.

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

- (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 in which case the liability of Guarantor under this Guaranty shall be reduced by the value received by Beneficiary upon any such foreclosure; and
- (f) Guarantor shall continue to be liable under this Guaranty and the provisions hereof shall remain in full force and effect notwithstanding:

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- (i) Any modification, amendment, supplement, extension, agreement or stipulation between Principal and Beneficiary or their respective successors and assigns, with respect to the Agreement or the obligations encompassed thereby;
- (ii) Beneficiary's waiver of or failure to enforce any of the terms, covenants or conditions contained in the Agreement;
- (iii) Any release of Principal or any other guarantor from any liability with respect to the Obligations or any portion thereof;
- (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

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effective no earlier than sixty (60) calendar days from the date Beneficiary receives such written notice from Guarantor. Unless otherwise agreed in writing by Beneficiary, no such notice or termination shall release Guarantor from any liability as to any amount or performance that is at the time owing under the Agreement.

- (b) Notwithstanding the provisions of Paragraph 4(a) hereof, this Guaranty shall be reinstated if at any time following the termination of this Guaranty under Paragraph 4(a) hereof, any payment by Guarantor under this Guaranty or pursuant hereto is rescinded or must otherwise be returned by the Beneficiary or other person upon the insolvency, bankruptcy, reorganization, dissolution 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

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QFID# 1210, MM Tajiguas Energy LLC

the Obligations because it is the intention of Guarantor and Beneficiary that the Obligations which are guaranteed by Guarantor pursuant to this Guaranty should be determined without regard to any rule of law or order which may relieve Principal of any portion of such Obligations. Guarantor will permit any trustee in bankruptcy, receiver, debtor in possession, assignee for the benefit of creditors or similar person to pay Beneficiary, or allow the claim of Beneficiary 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.

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

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

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

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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 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:

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- a. The creditor may collect from the guarantor without first foreclosing on any real or personal property collateral pledged by the debtor.
- b. If the creditor forecloses on any real property collateral pledged by the debtor:
 - (1) The amount of the debt may be reduced only by the price for which that collateral is sold at the foreclosure sale, even if the collateral is worth more than the sale price.
 - (2) The creditor may collect from the guarantor even if the creditor, by foreclosing on the real property collateral, has destroyed any right the guarantor may have to collect from the debtor.

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;

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

9. No Waiver of Rights by Beneficiary.

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

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.

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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; Jurisdiction.

This Guaranty is made under and shall be governed in all respects by the laws of the State of California, without regard to conflict of law principles, and its provisions may not be waived, altered, modified or amended except in writing executed by an officer of each of Guarantor and Beneficiary. If any provision of this Guaranty is held invalid under the laws of California, this Guaranty shall be construed as though the invalid provision has been deleted, and the rights and obligations of the parties shall be construed accordingly. Guarantor and Beneficiary hereby consent to jurisdiction in and to conduct any judicial actions or proceedings arising directly, indirectly or otherwise in conjunction with, out of, or related to or arising from this Guaranty in Los Angeles, California. Guarantor's agent for service of process under this Guaranty is set forth in Section 17 of this Guaranty.

14. Construction.

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

15. Amendment; Severability.

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

16. Third Party Rights.

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

17. Notices.

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

Beneficiary.

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

Attn: Director, Renewable and Alternative Power
Phone: (626) 302-1212
Facsimile: (626) 302-1103

with a copy to:

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

Attn: Director, Risk Control
Phone: (626) 302-1129
Facsimile: (626) 302-2517

Guarantor.

Algonquin Power Income Fund
2845 Bristol Circle
Oakville, Ontario L6H 7H7
Canada

Attn: Chief Financial Officer
Phone: (905)465-4500
Facsimile: (905)465-4540

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its Agent for Service of Process:

[name]
[street]
[city state zip]

Attn:
Phone:
Facsimile:

Principal.

MM Tajiguas Energy LLC
2845 Bristol Circle
Oakville, Ontario L6H 7H7
Canada

Attn: Manager
Phone: (905)465-4500
Facsimile: (905)465-4540

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.

ALGONQUIN POWER INCOME FUND

By: _____

Title: _____

Date: _____

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

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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

MM TAJIGUAS ENERGY LLC

SOUTHERN CALIFORNIA EDISON COMPANY ("SCE"), a California corporation, and MM TAJIGUAS ENERGY LLC ("MM Tajiguas"), a Delaware limited liability corporation, hereby enter into this Non-Disclosure Agreement ("Agreement").

SCE and MM Tajiguas 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. MM Tajiguas desires to submit a proposal in response to the RFP.
- C. The Parties desire to keep confidential any confidential or proprietary information disclosed by MM Tajiguas to SCE as part of MM Tajiguas's submission of a proposal in response to the RFP (the "Proposal"), or any confidential or proprietary information that may be disclosed by SCE to MM Tajiguas as part of discussions or negotiations with MM Tajiguas concerning MM Tajiguas's 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 Disclosee").

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.

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

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

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.

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# 1210, MM Tajiguas Energy LLC

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

MM TAJIGUAS ENERGY LLC,
a Delaware limited liability corporation

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

By:



Evan G. Williams
Authorized Agent

By:



Kevin Payne
Director, QF Resources

Date: 11-9-05

Date: 11/7/05

*** End of EXHIBIT J ***

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

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 and Development Fee*

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 and Development Fee*1. Seller's Request for an Agreement Deposit or Development Fee Refund.

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

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

2. Full Return of Agreement Deposit for Termination of Agreement; Full Return of Development Fee for Termination of Expansion.

Provided that SCE does not dispute Seller's Notice of request for Agreement Deposit or Development Fee refund pursuant to Item 1(a) above, SCE shall return the Agreement Deposit or Development Fee 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 or Development Fee for Demonstrating 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 or Development Fee refund pursuant to Item 1(b):

- (a) Retrieve interval data downloaded from the CAISO Approved Meter for the twelve (12) hour periods before and after the Demonstration Hour;
- (b) In connection with a request for a Development Fee refund, complete a site visit to verify that the Expansion was developed in accordance with the Generating Facility and Site Description set forth in Exhibit B.
- (c) If the Demonstrated Contract Capacity as determined in Item 3(a) above is greater than or equal to the applicable Contract Capacity for either the Initial Facility or the Expansion,

then Seller shall qualify to receive a full return of the Agreement Deposit or Development Fee as applicable.

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- (d) If the Demonstrated Contract Capacity as determined in Item 3(a) above is less than the applicable Contract Capacity for either the Initial Facility or the Expansion,

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

- (e) Based upon the information in Item 3(a), calculate the amount of Agreement Deposit or Development Fee refund due Seller pursuant to Sections 3.05(e), Section 3.05(f) and 3.05(g).
- (f) Provide Notice to Seller of the amount of Agreement Deposit or Development Fee being returned pursuant to Item 3(d), the amount of Development Fee forfeited, as applicable, and the reason(s) that a forfeiture of all or part of the Agreement Deposit or Development Fee is appropriate.
- (g) Return any Agreement Deposit or Development Fee due Seller if such Development Fee 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 or Development Fee is due Seller. If Seller is only entitled to a partial return of the Agreement Deposit or Development Fee SCE shall submit a drawing certificate on the Letter of Credit for the amount of Agreement Deposit or Development Fee 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 3.20 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").

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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;
- (b) One (1) column for the time;
- (c) One (1) column for the weekday;

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- (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 ***

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

EXHIBIT N

Form of Letter of Credit

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

QFID# 1210, MM Tajiguas Energy LLC

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.

QFID# 1210, MM Tajiguas Energy LLC

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

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

The facsimile transmittal shall be deemed delivered when received.

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.

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QFID# 1210, MM Tajiguas Energy LLC

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

Except so far as otherwise stated, this Letter of Credit is subject to the International Standby Practices ISP98 (also known as ICC Publication No. 590), or revision currently in effect (the "ISP"). As to matters not covered by the ISP, the laws of the State of California, without regard to the principles of conflicts of laws 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 that certain Renewable Power Purchase and Sale Agreement between Applicant and Beneficiary, dated as of [Date of Execution] (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.

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- []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 or Development Fee 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 or Development Fee 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.

QFID# 1210, MM Tajiguas Energy LLC

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

Beneficiary: SOUTHERN CALIFORNIA EDISON COMPANY

By:

Name:

Title:

*** End of EXHIBIT N ***

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

EXHIBIT O

CAISO Charges and CAISO Sanctions

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

EXHIBIT O

CAISO Charges and CAISO Sanctions

This Exhibit O sets forth the obligations of Seller for all CAISO Charges and CAISO Sanctions passed on to Seller during the Term of this Agreement, pursuant to Section 3.21.

1. Determining Applicability of CAISO Charges.

Seller shall be responsible for all CAISO Charges for all Settlement Intervals where Energy Deviations exceed the Performance Tolerance Band.

The Performance Tolerance Band shall equal the quantity in any Settlement Interval, in kWh, that is product of:

- (a) Three percent (3%) times
- (b) Contract Capacity divided by
- (c) The number of Settlement Intervals in the hour.

2. CAISO Sanctions.

Seller shall be liable to reimburse SCE for all CAISO Sanctions incurred by SCE as a result of Seller's failure to adhere to its obligations under the CAISO Tariff or any CAISO directive, as such directive may be communicated to Seller by SCE.

3. Billing and Documentation of CAISO Charges and CAISO Sanctions.

- (a) The CAISO Charges and CAISO Sanctions will be available for billing approximately one hundred twenty (120) days following the last day of a calendar month or thirty (30) days after the CAISO final settlement data is available to SCE, whichever is sooner.
- (b) SCE shall provide to Seller the applicable back-up data used for validating CAISO Charges and CAISO Sanctions.

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

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